

**VOLUME I**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1964**

**No. 345**

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**MARYLAND, FOR THE USE OF NADINE Y. LEVIN,  
SYDNEY L. JOHNS, ET AL., PETITIONERS,**

**vs.**

**UNITED STATES.**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**PETITION FOR CERTIORARI FILED AUGUST 3, 1964  
CERTIORARI GRANTED OCTOBER 19, 1964**

# INDEX

Original Print

Record from the United States District Court for  
the Western District of Pennsylvania

Relevant docket entries in No. 17503

Clerk's note

A 1

E 6-16

Page

## 5. Excerpts from transcript and exhibits pertaining to preliminary issue:

### a. Transcript of proceedings, May 29 and 31, 1961 17

Witnesses:

Robert J. Skahan ..... 17

Captain Julius R. McCoy ..... 35

Lieutenant Colonel Victor F. Kilkowski ..... 122

John James Stasko ..... 186

### b. Plaintiff's Exhibit 1, Local Flight Clearance .... 207

Plaintiff's Exhibit 2, Flight Order Number  
105 ..... 209

Plaintiff's Exhibit 3, Civilian Personnel Man-  
ual ..... 210

Plaintiff's Exhibit 4, AFR 60-2 ..... 219

Plaintiff's Exhibit 5, File of Bureau of Em-  
ployee's Compensation ..... 224

Plaintiff's Exhibit 6, Special Orders No. 182,  
dated 13 Sept., 1955 ..... 231

Plaintiff's Exhibit 7, AFR 45-2 ..... 233

Plaintiff's Exhibit 9, Deposition of Col.  
Ebaugh ..... 237

Plaintiff's Exhibit 10, Deposition of Major  
Britton ..... 253

Plaintiff's Exhibit 11, Deposition of Gen. Wil-  
son ..... 277



	Page
Plaintiff's Exhibit 12, Deposition of Capt. McCoy .....	343, 416
Plaintiff's Exhibit 13, Deposition of Major Scott .....	499
Plaintiff's Exhibit 14, Deposition of Col. Kilowski .....	509
Plaintiff's Exhibit 15, National Guard Regulations No. 75-16 .....	634
Plaintiff's Exhibit 16, National Guard Regulations No. 75-16 .....	647
Plaintiff's Exhibit 17, ANGR 40-01 .....	652
c. Defendant's Exhibit 1, General Orders .....	660
Defendant's Exhibit 2, Special Order No. 93 ..	662
Defendant's Exhibit 3, Local Flying Area, S.O.P. No. 3 .....	663
Defendant's Exhibit 4, Passengers in Aircraft, S.O.P. No. 9 .....	665
Defendant's Exhibit 5, Local Clearance, S.O.P. No. 18 .....	666
Defendant's Exhibit 7, AFR 45-2 .....	667
Defendant's Exhibit 9, ANGR 50-01 .....	671
6. Interrogatories and Answers of September 1959 ..	677
7. Memorandum, filed Sept. 7, 1961 .....	679
8. Findings of Fact, filed October 27, 1961 .....	679
9. Conclusions of Law, filed October 27, 1961 .....	688
10. Order, filed October 27, 1961 .....	688
11. <del>Supplemental Pretrial Proceedings, filed November 2, 1961</del> .....	<del>689</del>

# Index Continued

iii

Original Print

Plaintiff's Exhibit No. 5—Release by Donald A. Chalmers dated May 20, 1958	689	689
Excerpt from interrogatories	690	690
Opinion, Gourley, C. J.	691	691
Proceedings in United States Court of Appeals for the Third Circuit	709	708
Opinion, Smith, J.	709	708
Opinion concurring in result, Hastie, J.	727	725
Dissenting opinion, Staley, J.	728	726
Judgment in Case No. 14,041	734	731
Judgment in Case No. 14,042	735	732
Order denying petition for rehearing	736	733
Clerk's certificate (omitted in printing)	737	733
Order extending time to file petition for writ of certiorari	738	734
Order allowing certiorari	739	734

[fol. A]

**IN UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

C. A. No. 17503

STATE OF MARYLAND for the use of NADINE Y. LEVIN, individually, and as next friend, mother and guardian of and for the use of JOY ELLEN LEVIN, an infant under the age of 14 years; and MELLON NATIONAL BANK AND TRUST COMPANY as Executor of the Estate of JACK LEVIN, deceased,

VS.

UNITED STATES OF AMERICA.

**RELEVANT DOCKET ENTRIES**

**1958**

Dec. 22 Complaint filed.

• • •

**1959**

• • •

Feb. 4 Answer of Capital Airlines, Inc., filed by Deft. with acceptance of service thereon.

Feb. 20 Stipulation filed and Order entered extending time for deft. United States to answer to 3/10/59. (Sorg, J.)

Feb. 26 Answer of Deft. U. S. of America filed.

• • •

July 16 Stipulation and Order entered allowing plffs. to file an amended complaint and granting defts. a period not less than 30 days within which to answer. (Miller, J.)

July 16 Amended Complaint filed.

Aug. 12 Answer of defendant, United States of America, to Amended Complaint, filed.

1959

- Sept. 28 Interrogatories filed by pltf.
- Dec. 11 Deft.'s objection to certain of pltf's. interrogs.
- Dec. 11 Answer of United States to Pltfs.' Interrogs.

1960

- Jan. 8 Acceptance of service and Notice of taking deposition of Julius R. McCoy, filed by counsel for plaintiffs.
- Feb. 10 Notice of taking Depositions filed with acceptance of service thereon.
- Apr. 28 Petition filed and Order entered, with consent thereon, continuing case to 7/1/60 (Gourley, J.).
- May 18 Notice of Taking Depositions of Richard S. Ackerman, Lawrence M. Scott, Charles A. Floyd, and Charles A. Laymen filed by pltf. with acceptance of service thereon.
- July 22 Notice of Depositions to be taken of Major General Winston P. Wilson, Lt. Colonel Irvin E. [fol. B] Elbaugh, and Captain Robert H. Seabolt filed by U. S.
- Dec. 30 Notice of Depositions to be taken of deft., Capital Airlines, Inc., by James P. Franklin, W. E. McMulkin, Louis Hagler, P. E. Williams, T. L. Vorney, Paul Breslin, Ralph Stavell, Steve Szalma, Everett Chapman, R. W. Hardesty, R. N. Reed filed. Acceptance of Service by counsel for each deft. thereon.

1961

- May 27 Stipulation re proceedings filed by counsel of record.
- June 14 Pltf.'s pretrial statement, narrative statement, witness list and statement of damages, filed.
- June 22 Pretrial statement and list of witnesses of deft. Capital Airlines, Inc., filed.
- June 23 Notice of taking depositions of witnesses C. E. Naill, F. A. Moore, George Lowery, William Care, M. Joy, John Wenner filed by U. S.
- June 23 Narrative Statement and List of Witnesses filed by deft. USA.
- July 28 Pretrial stipulation of counsel filed. (filed this number).
- Aug. 2 Pretrial held before J. Gourley, Trial memo filed. (Rep. D. Harrington) filed this number.
- Aug. 3 Order entered, dated Aug. 2, 1961, consolidating this case with CA 17541, (Gourley, J.). (filed this number).
- Sept. 18 Memo Order entered directing that counsel file a complete record of the hearing before the U. S. District Court of Columbia in which the issue was adjudicated as to whether the pilot involved in said accident was engaged in a course of activity for which the U. S. of America is subject to liability; further ordered, that if counsel desires to present additional testimony, such testimony must be presented on or before Nov. 15, 1961, at 10:00 AM (Gourley, J.).
- [fol. C]  
Nov. 27 Trial opens before Gourley, J. and jury.



1961

- Nov. 28 Trial continues.
- Nov. 29 Trial continues. Capital Airlines dismissed without prejudice jury discharged and case continued Non-Jury. Trial memo filed. (Rep. D. Harrington).
- Nov. 29 Stipulation filed and Order entered dismissing Capital Airlines, Inc., without prejudice and without costs. (Gourley, J.).
- Nov. 29 Pursuant to Stipulation filed and Order entered, Capital Airlines, Inc., is hereby dismissed without prejudice and without costs.
- JAMES H. WALLACE, JR., Clerk.
- Nov. 29 Non-Jury trial opens before Gourley, J.
- Nov. 30 Non-Jury trial continues.
- Dec. 1 Non-Jury trial continues. (case continued to 12-7).
- Dec. 7 Non-Jury trial continues and concludes. C.A.V. before Gourley, J.  
Non-Jury trial memo filed. (Rep. E. Pock and James Riffe).

- . . .
- Dec. 20 Opinion and Conclusions of Law filed and Order entered directing that judgment be entered in favor of Nadine Y. Levin and against the United States of America in the amount of \$245,000; judgment be entered in favor of Joy Ellen Levin and against the United States of America in the amount of \$100,000; judgment be entered in favor of Mellon National Bank and Trust Company, Executor of the Est. of Jack Levin, dec'd and against the United States of America in the amount of \$5,000 for conscious pain and suffering and in the amount of \$1,000. as stipulated funeral expenses or a total of \$6,000; judgment be entered in favor of Sydney L. Johns and



1961

against the United States of America in the amount of \$70,000.00; and judgment be entered in favor of Kennedy Smith, Executor of the Estate of Ruth M. Johns, dec'd and against the United States of America in the amount of \$5,000; for conscious pain and suffering and in the amount of, \$1,000 as stipulated funeral expenses, or a total of \$6,000. (Gourley, J.).

[fol. D]

Dec. 21 Pursuant to Opinion and Conclusions of Law filed and Order entered, judgment is hereby entered as stated above.

JAMES H. WALLACE, JR., *Clerk.*

1962

Feb. 15 Notice of Appeal filed by the United States.

Feb. 19 Copies of Notice mailed U. S. Court of Appeals and counsel for pltfs. letters to U. S. Attorney and Judge Gourley.

Mar. 9 Motion filed, with consent thereon, and Order entered extending time to file record and docket appeal for 90 days from filing of the first notice of appeal. (Gourley, J.).

May 10 The Record on Appeal, except exhibits, forwarded this day to Ida O. Creskoff, Clerk, U. S. Court of Appeals for the Third Circuit; letters mailed to counsel and Court.

[fol. E]

## CLERK'S NOTE

Transcript of proceedings in the United States District Court for the District of Columbia in Civil Action Nos. 1236-59, 1237-59, 1238-59—State of Maryland for the use of Mary Jane Meyer, State of Maryland for the use of Vance Lewman Brady, Capital Airlines, Inc., Plaintiffs, v. United States of America—filed pursuant to order of September 18, 1961, of the United States District Court for the Western District of Pennsylvania in Civil Action No. 17503—State of Maryland for the use of Nadine Y. Levin, etc., et al., Plaintiffs, v. United States of America—follows:

## TRANSCRIPT OF PROCEEDINGS, MAY 29 AND 31, 1961

7 (Opening statements were made by Mr. Galiher and Mr. Pettibone.)

MR. GALIHER: YOUR HONOR, I would like to start out now by calling a gentleman from the Bureau of Employees Compensation Commission, who has brought some records in response to a subpoena, and simply have them identified because I do not want to go into them at this point, and he may desire to leave at 12:30.

Mr. Skahan.

Thereupon,

Robert J. Skahan

called as a witness by the plaintiffs, being first duly sworn, [was examined and testified as follows:

Direct Examination.

By MR. GALIHER:

Q. Mr. Skahan, what is your full name and would you please spell your last name? A. Robert J. Skahan, S-k-a-h-a-n.

Q. What is your address? A. Home address?

Q. Please. A. 2339 Holmes Run Drive, Falls Church, Virginia.

Q. What is your occupation? A. I am an attorney for the Department of Labor.

8 Q. And in what particular branch of the Department of Labor are you presently associated or affiliated? A. I am Chief of the Subrogation Branch, Office of the Solicitor.

Q. In response to a subpoena served upon your branch to bring with you certain records concerning a matter involving Captain Julius R. McCoy, have you responded to that subpoena and brought those records? A. Yes, I have.

Q. Would you hand them to me, if you please, at this time.  
A. (Handing records to counsel.)

Q. Now, I understand so that you might be able to take these back, you have prepared verbatim copies of what is contained in these records? A. Yes, I have.

Q. Do you have two of those? A. Yes, I do.

Q. I wonder if you would give those to me.

(Copies of records were handed to counsel.) You have three, can you give me one more? A. Yes.

Q. Fine.

MR. GALIHER: Would you like to examine these to make sure that they are accurate?

9 (Mr. Galiher conferred with Mr. Pettibone.)

MR. GALIHER: Will the Court indulge us while Mr. Pettibone takes a look at those?

THE COURT: Yes, certainly.

MR. GALIHER: Counsel has stipulated we may introduce, in lieu of the original records, the copies. I have enough copies for everyone, Your Honor, so that you may have one, Mr. Pettibone has his, and I have one.

MR. PETTIBONE: We did not stipulate to the introduction of this file or the contents of it.

MR. GALIHER: I haven't offered it. I simply at this time want to relieve this gentleman of the necessity of coming back, and secondly, having to leave his original records when we have copies.

THE COURT: Well, the statement that you made was to indicate that the stipulation was that this copy was a true copy of what is in the file, is that it?

MR. GALIHER: That is all I am asking.

MR. PETTIBONE: That is satisfactory to the defendant.

THE COURT: Very well.

By MR. GALIHER:

Q. There is one thing here I wish you would read into the testimony, which didn't come out too well on your photostat machine.

10 MR. GALIHER: I have no ulterior motive, it is the only way I know to get it in the record because I can't read it. I will show you what it is.

(Mr. Galiher conferred with Mr. Pettibone.)

By MR. GALIHER:

Q. Would you please read the statement into the record which seems to start, "Make no payment." Can you read that? A. (Reading:) "Make no payment for time being. See Department of Justice letter of 2-27-59."

Q. Thank you.

THE COURT: See letter of what date?

THE WITNESS: 2-27-59.

By MR. GALIHER:

Q. Now, are those records which you have brought here, an exact copy of which has been identified and stipulated on, records of the Department of Labor made in the ordinary course of its business and as prescribed by the regulations of the Department of Labor? A. Yes, they are.

MR. GALIHER: I have no other questions of this witness, Your Honor.

#### Cross-Examination

By MR. PETTIBONE:

Q. Mr. Skahan, does this file that you have produced contain records or statements or documents prepared by anyone other than you or members or employees of your office? A. Yes, it does.

11 Q. Will you please take the file and let us start at the beginning and go through it. I would like you to identify each record or document which was prepared or made by you or a member or employee of your office in the Department of Labor. I want you to identify just merely those which were made by those persons. Now, describe each document so that they can be identified so the reporter can take it down.

**THE COURT:** Are you going to try to identify that by subject matter, or by a marking of some kind?

**MR. PETTIBONE:** Well, I think there is such a collection of documents, it is apt to be by a brief description and date perhaps, sometimes insofar as the subject matters are form numbers, we can use that to simplify it, but some other matters may just have to be described because there is no distinctive mark.

**By MR. PETTIBONE:**

**Q.** Will you proceed? **A.** The first document prepared in my office is a slip dated January 11, 1960, and it has my initials, R. J. S., just above the date.

The second is a sheet of yellow paper, handwritten, signed F. F. Nolte, dated January 8, 1960.

The next is a sheet of yellow paper, handwritten, the file number and the name McCoy in the upper righthand corner, my initials, R. J. S., at the bottom, with the date August 25, 1959.

The next is a slip of white note paper, handwritten, there is a handwritten note in the upper portion which I cannot identify as to authorship, and below that in my own handwriting is an additional note, my initials, R. J. S., dated August 25, 1959.

Next is a letter dated December 9, 1958, addressed to Mr. Lester S. Jayson, with the Department of Justice, signed by William B. Wright.

Next is a letter dated November 4, 1958, also addressed to Mr. Jayson, signed by Mr. William B. Wright.

There is a form here which is used in our office but it was not prepared by us, Form G-4, signed Julius R. McCoy, dated October 3, 1958.

Next is a letter dated August 28, 1958, addressed to Julius R. McCoy, 6C Alder Drive, Baltimore, Maryland, signed William B. Wright.

**MR. STEIN:** What was the date of that?

**THE WITNESS:** August 28, 1958.



Next is a letter dated July 14, 1958, addressed to Julius R. McCoy.—

MR. STEIN: What was that letter, what was the last document you just identified?

THE WITNESS: The letter dated July 14, 1958?

13 MR. STEIN: We don't seem to be able to find it here, that is why I interrupted.

MR. PETTIBONE: Does this copy which you brought in, and which was prepared, follow the same chronological sequence as the file? We are unable to follow this from our copy, they seem to be in different sequence here.

THE WITNESS: They are supposed to, be in the same sequence.

MR. PETTIBONE: We don't find them. Which one are you referring to?

THE WITNESS: July 14, 1958, letter to Mr. McCoy, signed by Mr. Wright.

MR. DAVIDSON: It is in there, but it is further down.

MR. STEIN: Here it is. We have it now, Mr. Skahan.

MR. PETTIBONE: You may proceed.

THE WITNESS: Next is a letter dated—

MR. STEIN: Describe that again, I don't know if you finished, July 14, 1958, from Mr. Wright?

THE WITNESS: To Mr. McCoy.

MR. STEIN: I see, okay.

THE WITNESS: Next is a letter dated June 6, 1958, addressed to Julius R. McCoy—

MR. STEIN: Just hold up here, you hopped over a few.

THE WITNESS: —signed by Mr. Wright. Those are the only documents in this file.

14 MR. STEIN: Those are the only documents in this file prepared by the Solicitor's office?

THE COURT: You mean prepared by the Solicitor's office of your office?

THE WITNESS: I am in the Solicitor's office.

By MR. PETTIBONE:

Q. Does your file contain Form C.A.1, the form which is —well, first of all, does it contain a Form C.A.1?

THE COURT: Is that C.A.1?

MR. PETTIBONE: C.A.1, Your Honor.

THE WITNESS: Yes, it does.

By MR. PETTIBONE:

Q. What is the general nature or purpose of such a Form C.A.1? A. Form C.A.1 is Employee's Notice of Injury or Occupational Disease.

Q. Does your file contain a Form C.A.2? A. Yes, it does.

Q. What is the nature or purpose of that Form C.A.2? A. Form C.A.2 is the Official Superior's Report of Injury.

Q. Does your file contain a Form C.A.16? A. Yes, it does.

Q. What is the nature or purpose of Form 16? A. Form C.A.16 is a Request for Treatment of Injury under 15 the United States Employees' Compensation Act.

Q. Does your file contain any other C.A. Forms, other than those which I have just named? A. Yes, it does.

Q. What are the C.A. numbers? A. There is a Form C.A. 20, which is an Attending Physician's Report. There is also a C.A.25, which is a Summary Sheet.

Q. Will you please point out the Summary Sheet to me that you just referred to? A. (Handing form to counsel.)

Q. Does this Summary Sheet indicate what action was taken by your office in regard to the claim which was filed?

A. With regard to my office, yes.

Q. And in what paragraph number or what part of that Summary Sheet is that to be found? Just designate the part, if you can, so it can be identified. A. On the face of the sheet, in the lower lefthand portion, there is a block which is headed "Third Party Action," there is a stamp, a date, and some initials.

Q. What are the initials that you refer to? A. They are the initials of Mr. William B. Wright.

Q. Are there are other initials on this sheet? A. Yes, there are.

16 Q. What initials are they and where are they to be found? A. They are more or less in the center section of the face of the sheet under, "Examiner's Findings."

Q. What initials appear there? A. Under number one, there are the initials J.S.

Q. Who is J.S., if you know? A. J.S. is John Stasko.

Q. Who is John Stasko? A. He at that time was an examiner, claims examiner for the Bureau of Employees Compensation, United States Department of Labor.

Q. Is he still employed by the Department of Labor? A. Yes, he is.

Q. By your Bureau? A. By the Bureau of Employees Compensation.

Q. All right. Are there any other initials on there? A. Yes, the initials J.M.D. also appear.

Q. Do you know whose initials they are? A. They are the initials of John M. Diggins.

Q. Who was Mr. Diggins? A. At that time, Mr. Diggins was also a claims examiner, a trainee, I believe.

Q. Was he employed by the Bureau of Employees Compensation? A. Bureau of Employees Compensation, Department of Labor.

17. MR. PETTIBONE: I have no further questions.

#### Redirect Examination

By MR. GALIHER:

Q. Who is Mr. Stuart Rothman, referred to in that file? A. At that time, Mr. Rothman was Solicitor of Labor.

Q. And what was Mr. Wright's position at that time? A. Mr. Wright at that time was Chief of the Subrogation Branch, Office of the Solicitor.

Q. Was the claim involving Captain Julius R. McCoy handled and processed just the way all claims were proc-

essed and handled involving employees of the United States Government injured in line of duty? A. Yes, it was.

Q. And is it necessary and was it, in this case, to correspond with the particular department or branch of the Service that Captain McCoy was associated with or employed by, in order to handle and process this particular compensation claim? A. There was some correspondence between the Bureau of Employees Compensation of the Department of Labor and the United States Property and Fiscal Officer for the State of Maryland.

Q. And that was handled in accordance with the usual manner of handling such a claim? A. Yes, it was.

18 Q. Now, did the Department of Justice have any connection with the United States Property and Fiscal Officer for the State of Maryland, so far as the file would indicate? A. I am not sure what you mean by "connection."

Q. Well, does the Department of Justice ordinarily interest itself in a compensation claim involving the employee of another bureau or agency?

MR. PETTIBONE: I am going to object to that question, no foundation has been laid yet to show that this witness has any familiarity with the practices of the Department of Justice; no qualification to answer a question of this kind has yet been shown.

MR. GALIHER: He certainly, from his employment, will know whether another agency ordinarily interferes or interests itself in a claim brought on behalf of the employee of an agency other than the Department of Justice.

MR. PETTIBONE: I object to the use of the term "interfere." There has been no testimony there was any interference here and that carries an implication that is not disclosed by any evidence yet.

THE COURT: I understood your question to this witness to be did the Department of Justice have a connection with this Fiscal Officer in Maryland.

MR. GALIHER: Yes.

19 THE COURT: Well, now, he is employed by the Department of Labor.

MR. GALIHER: Yes. Well, he didn't understand my question and I then abandoned it and asked him the specific question, does the United States Department of Justice ordinarily interest itself in a compensation claim brought by an employee of some other United States department or bureau, that is the only pending question at this time, Your Honor.

THE COURT: Well, he would only know about his office, I would think.

MR. GALIHER: My question is solely as far as the compensation claim in his office is concerned.

MR. PETTIBONE: My objection is to the fact that the witness is an employee of the Department of Labor. The question relates to the policies and practices of the Department of Justice. There is no evidence to show that he is qualified to answer questions concerning the Department of Justice or knows anything about it.

THE COURT: I thought you said that question had been abandoned?

MR. GALIHER: The sole question is, as far as his office was concerned, Judge Matthews, did the Department of Justice ordinarily interest itself in claims for compensation brought by employees of other departments or agencies who were injured and made claims for compensation to his department?

20 MR. PETTIBONE: There is no showing yet that he has knowledge as to whether or not the Department of Justice interests itself in such claims and no evidence to show that he has any way of knowing what the practice or policy of the Department is, in that connection.

MR. GALIHER: We aren't talking about the policy of the Department of Justice. We are talking about it as manifested in his department in this and in other claims, and certainly from his employment there, he would know if that had been done in other cases or was ordinarily done.



THE COURT: In his office?

MR. GALIHER: Yes, ma'am, that is all.

THE COURT: Well, I think he may answer that, if he knows.

THE WITNESS: Within my knowledge, the Department of Justice does not ordinarily interest itself in compensation claims.

MR. GALIHER: Thank you, sir. That is all.

THE COURT: Have you finished now with this witness?

MR. GALIHER: Yes, ma'am.

THE COURT: Have you finished?

MR. PETTIBONE: Yes, Your Honor.

MR. GALIHER: May Mr. Skahan be excused?

THE COURT: I take it no one has any objection to Mr. Skahan being excused and taking with him his original records, is that correct?

21 MR. PETTIBONE: No objection on my part, Your Honor.

MR. GALIHER: Yes, ma'am.

THE COURT: You are excused and you may take your records.

MR. GALIHER: Thank you very much, Mr. Skahan.

(Witness excused.)

THE COURT: We are going to recess now for lunch. I have an engagement that will take a little more time than usual, so the recess will be until 2:15 and we will sit from 2:15 to 4:15.

(Whereupon, at 12:45 p.m., the Court adjourned until until 2:15 p.m.)

22 Afternoon Session

(The proceedings resumed at 2:25 p.m.)

THE COURT: Mr. Galiher.

MR. GALIHER: Thank you, Your Honor, Your Honor, next I would like to introduce into evidence, show to you,



rather, certain interrogatories and answers thereto, which were propounded to the Defendant United States of America and which are in all three of the files on Your Honor's desk. I would, first of all, like to read into evidence interrogatory No. 1. Now, these were propounded by the plaintiff to the Defendant United States:

"Did the United States of America on May 20, 1958, own a T-33A-5 jet airplane bearing serial number NC 53-5966?"

The defendant answers that:

"Yes, except the serial number of the T-33A-5 jet airplane was NG 53-5966."

Would Your Honor like me to wait?

THE COURT: What is that in, this file?

MR. GALIHER: It is in all of those files, I think one was filed in each one. The one I happen to be looking at, at this time, happens to be the Brady file.

THE COURT: I have the questions now.

Now I have the answers. You may go ahead.

MR. GALIHER: Yes, ma'am. Number 2(c):

23

"For what Government Branch was said Airplane purchased by the United States of America?"

And the answer:

"It was not purchased for any 'Government Branch' of the United States as it was allocated to the Maryland Air National Guard and delivered by the manufacturer directly to the State of Maryland Air National Guard."

Number 2(d):

"Was the said airplane assigned or in some manner transferred or turned over to the Maryland Air Na-

tional Guard, and if so, when and by whom, and by what document or means? Attach a true and correct copy of the document to your answers to these interrogatories."

The answer:

"Yes; Headquarters, Air Materiel Command directed Lockheed Aircraft Corporation to release said aircraft to the 104th Fighter Bomber Squadron, Air National Guard, Harbor Field, Baltimore, Maryland, with delivery to Friendship Airport, Baltimore, Maryland. This was accomplished on or about September 26, 1955, by TWX, a copy of which is attached hereto and marked 'Exhibit 1'."

Next, question No. 5:

24 "By the authority and direction of what Government unit or department was the said airplane turned over to the Maryland Air National Guard?"

And the answer:

"Air Materiel Command, United States Air Force."

And then way over to question 86, may it please the Court:

"Who paid for the fuel used in connection with the operation of the said T-33 jet airplane at the time of this flight and at the time of prior flights within 5 years made by officers of the United States Air Force Reserve associated with the Maryland Air National Guard?"

And the answer:

"The fuel consumed by the T-33 flight in question was provided by the United States Government. The

balance of the question is meaningless, as there are no officers of the United States Air Force Reserve associated with the Maryland Air National Guard."

And finally No. 90, Your Honor.

"Who paid for the upkeep, maintenance and repair of the said T-33 jet airplane, Serial Number 53-5966 on and within 5 years prior to May 20, 1958? If paid by the State of Maryland, was the State reimbursed by the Federal Government, by any subsidy or otherwise?"

25

And the answer:

"From on or about September 26, 1955, the date of delivery of the aircraft by the manufacturer, the United States Government paid for the upkeep, maintenance and repair of the T-33, Serial No. NG 53-5966, until May 20, 1958."

May 20, 1958, was the date of the collision and it was not subject to repair, it was just completely demolished in the accident.

We have agreed, Your Honor, in the interest of saving you as much time as possible, to use, in lieu of the oral testimony of certain witnesses, their depositions, with the exception of Captain McCoy and Col. Kilkowski, who will testify. These depositions are before Your Honor and I would like to refer Your Honor, first, to the deposition of General Wilson.

Now, with respect to General Wilson, Your Honor, you will also find in your file a supplemental pre-trial statement which contains a review of the pertinent testimony of these witnesses whose depositions are before Your Honor, and with Your Honor's permission, I would like to refer you to page 5 of the plaintiff's supplemental pre-trial statement. Now, what I would like to do, again in the interest of

saving time, instead of reading all this testimony, I have condensed and made page references to all testimony which, in our opinion, is significant, as Your Honor will see. I would like to go along and refer to that and if Your Honor would like to stop me at any given point, we can actually refer to the testimony of the witness and look at the questions and answers, if there is anything here Your Honor would like further clarification on.

THE COURT: Very well.

MR. GALIHER: The authority for the creation of the Air National Guard Bureau, as I have indicated, is found in the testimony of General Winston P. Wilson, Deputy Chief of the National Guard Bureau and Assistant Chief for the National Guard Bureau for the Air National Guard. As he pointed out, the National Guard came into existence under the quoted article of the Constitution:

"The Congress shall have power \* \* \* To provide for organizing, arming and disciplining, the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers and the authority of training the Militia according to the discipline prescribed by Congress."

The Guard has two statuses, both a State and a Federal status. If a State says it will accept the unit, then the authority to organize under the regulations prescribed by the Air Force as to what a unit has to have to maintain, to get a Federal organization.

MR. PETTIBONE: Excuse me, if the Court please. I am sorry to interrupt, but it seems to me this procedure is quite irregular. It strikes me that counsel for the plaintiff is, in essence, summarizing the testimony of a witness. As he stated, we have stipulated and agreed that the deposition which was previously taken of this witness, Major General Wilson, would be admitted in evidence in this pro-

ceeding. Apparently, the counsel for plaintiff is now reading from a pre-trial statement which has been filed and is before the Court and which, in what the defendant considers to be an argumentative way, attempts to summarize that testimony in that deposition. It would seem to the defendant that not only is the procedure irregular, but this is not the proper place for such an argument. It is also in violation of the best evidence rule, because with the deposition before the Court, the questions and answers contained therein should speak for themselves.

THE COURT: Very well. Since there is no objection, you may summarize the evidence at the end of your case, that is, in your argument.

MR. GALIHER: Your Honor, I think there is necessary testimony in General Wilson's deposition which Your Honor should have at the outset of the case, before you receive the oral testimony, and I am simply doing it in chronological order.

28 Now, I have given Mr. Pettibone a copy of what is on file here and what I am attempting to do is to summarize it, and if there is anything that I say which is not correct, he will have an opportunity to check that. Otherwise, the only way I can get this testimony before Your Honor is to have it read back and forth in question and answer form, and it seems to me that we are just taking up unnecessary time when I do that. He has every comment that I will make, he has every page reference and if he doesn't agree with it, he can point out in the testimony where it is in conflict. I am simply trying to save the Court's time, that is all.

This man is at the top, he is Deputy Chief of the National Guard Bureau and that is where we should start, to give Your Honor the picture. As I say, everything that I am going to bring to Your Honor's attention, as an officer of the Court, I state is in that deposition and I also have the page references. I could not bring it to Your Honor's attention other than by digesting it, as I have, short of reading questions and answers. Now, if counsel insists on doing



that, we can do that, but it seems to me that that will prolong this unnecessarily.

THE COURT: Well, your summary is here in the file.

MR. GALIHER: Yes.

29 THE COURT: And available for me to read, as well as this deposition.

MR. GALIHER: Well, might I ask Your Honor to do this, might we pause so Your Honor might read it, so that we might go forward in chronological order.

THE COURT: You mean read the deposition?

MR. GALIHER: No, read the digest.

THE COURT: Well, that is exactly what the objection has been made to, presenting it in that way. But when the case is finally submitted, I have everything that is in the file, as well as this deposition.

MR. GALIHER: Well, may I ask Mr. Pettibone how he would like me to proceed with the testimony of General Wilson? Perhaps I can overcome any objection that he might have.

THE COURT: Well, you may confer with him, if you wish.

(Mr. Galiher conferred with Mr. Pettibone.)

MR. PETTIBONE: I see no alternative but to read the deposition, questions and answers.

MR. GALIHER: Your Honor, I would then ask Your Honor to suspend the hearing at this time so that Your Honor may, yourself, read the deposition of General Wilson and then we can go on. I think it extremely important for your benefit, as well as for our case, that Your Honor get the picture in a chronological sequence.

THE COURT: Well, what deposition will follow the  
30 deposition of General Wilson?

MR. GALIHER: The oral testimony of Captain McCoy will follow this deposition. But, as I say, I am going to have to read it into evidence at this time or ask Your



Honor to read it, because I think it is extremely important from Your Honor's standpoint that it be done that way.

THE COURT: All right, just be seated and I will read it.

(At 2:45 p.m., the proceedings were suspended for the Court to read the deposition of General Wilson.)

THE COURT: If you gentlemen desire a recess, you may have one of ten minutes.

(At 3:15 p.m., the proceedings resumed.)

THE COURT: You may proceed, Mr. Galiher.

MR. GALIHER: Thank you, Your Honor. Specifically, Your Honor, for the sake of the record, I would like to call to Your Honor's attention at this time the parts of General Wilson's testimony which are contained in my supplemental pre-trial statement.

Next, Your Honor, I would like to introduce into evidence, at this time Air National Guard Manual 40-01. This has been the subject of a stipulation entered into by counsel, as is referred to in the pre-trial order, and there are certain significant parts of this Manual that I think would  
31 interest Your Honor at this time.

It will be interesting, I think, to Your Honor to note that in one of the cases which I gave to you this morning, the case of Holly v. United States, Air National Guard Regulation 75-16 was referred to.

I believe this Manual that I am now about to refer to superseded and took the place of 75-16.

THE COURT: Are you offering that Manual as a whole or just certain parts?

MR. GALIHER: Certain parts and, of course, if Mr. Pettibone has certain other parts to bring to your attention, certainly he may do so. May I call at this time to Your Honor's attention the pertinent parts that I have in mind?

THE COURT: Yes.

MR. GALIHER: Your Honor will see on the front cover of this Manual, "Air National Guard Manual ANGM 40-01, Civilian Personnel Manual," then the seal of the Department of the Army and the Air Force, as well as National Guard Bureau. It is dated March 1, 1958, and then down at the bottom, "Department of the Air Force, National Guard Bureau."

Next, drawing Your Honor's attention to the Foreword, again in the lefthand corner, "ANG Manual 40-01," "Department of the Air Force, Washington, 1 March 1958."

"Foreword . . . Provisions"—and again I am only taking from context: "Provisions of this Manual will govern  
32 all Air National Guard civilian employees, including those employed on a temporary hourly rate basis except those hired wholly from State or Service contract funds, and will become effective as of 1 April 1958."

"By Order of the Secretary of the Air Force: Edgar C. Erickson, Major General, Chief, National Guard Bureau."

And again at page 1, under Section 1, No. 3, Delegation of Authority:

"The authority of the National Guard Bureau to regulate the employment and rates of compensation is contained in Department of the Army General Order 96, dated 9 November 1951, subject, 'Delegation of Authority for the Employment and Fixing of Salaries for all Caretakers and Clerks in the National Guard Bureau'."

And again on page 2, under the heading "b. National Guard Maintenance Type Positions (NGM):"

"This type of category is characterized by trade, craft, maintenance, and labor type positions. These positions are similar to United States Civil Service Wage Board positions and pay rates are adjusted by periodic surveys conducted by the Army-Air Force Wage Board. The following pay rates are included in this category classification:

"(1) National Guard Maintenance (NGM). Technically skilled positions primarily concerned with the accomplishment of specific tasks and duties related to crafts, trades, maintenance of equipment and physical labor. The employees in these positions accomplish tasks and duties as directed by supervisory personnel."

Your Honor, there are other provisions in here containing job descriptions which will become significant, which I will refer to when the particular witness is on the witness stand.

I would like to call at this time Captain Julius R. McCoy.

THE CLERK: Plaintiff's Exhibit No. 3 marked for identification.

(Civilian Personnel Manual ANGM 40-01 was marked Plaintiff's Exhibit No. 3 for identification, and the designated parts were received in evidence.)

Thereupon,

**Captain Julius R. McCoy**

called as a witness by the plaintiff, being first duly sworn, was examined and testified as follows:

MR. GALIHER: May it please the Court, I would like to call Captain Julius M. McCoy as a witness under the provisions of Rule 43(b) of the Federal Rules of Civil Procedure. I think that Mr. Pettibone will stipulate that there is companion litigation pending in the Federal Court in Baltimore, Maryland, in which both the United States of

America and this gentleman are defendants. Because  
34 of the limitations of the service of original process in our Court, being confined to the territorial limits of the District of Columbia, Captain McCoy could not be served in the District of Columbia, but I think he certainly comes under the requirement of 43(b).

## Direct Examination

By MR. GALIHER:

Q. What is your name, please, sir? A. Julius R. McCoy.

MR. PETTIBONE: If the Court please, could we pause one moment? I don't know that the defendant can consent.

THE COURT: I can't hear you.

MR. PETTIBONE: The defendant cannot consent to the plaintiff's reference to Rule 43(b) as a basis upon which the witness has been called. Rule 43(b) provides that a party may interrogate any unwilling or hostile witness by leading questions, with other provisions pertaining thereto.

The defendant has no information or knowledge which would indicate that this witness is hostile or unwilling as far as either the plaintiff or this defendant is concerned. He is certainly not the witness of the defendant.

MR. GALIHER: I am not contending that, it is the next sentence, Your Honor, which I think applies to the situation.

THE COURT: "A party may call an adverse party or an officer, director," is that what you have reference to?

35 MR. GALIHER: Yes, ma'am.

THE COURT: Well, this witness is not being sued here but you say is being sued in Maryland and you haven't sued him here because you can't get process, is that it?

MR. GALIHER: Yes, ma'am. The same units are pending in the Federal Court in Maryland, the same language as these three actions, but in that case both the United States and Captain McCoy are defendants. Here, because of the unavailability of serving him, he is not a defendant.

THE COURT: Well, these people that are suing in Maryland, are not the same people that are suing here, are they?

MR. GALIHER: Yes, ma'am, they are the identical people, the same identical cases.

MR. PETTIBONE: The defendant objects because the witness is not an adverse party in this proceeding. I can't understand how the plaintiff could, therefore, treat him as

an adverse party when in fact he is not an adverse party in this proceeding.

THE COURT: I will rule that 43(b) applies.

By MR. GALIHER:

Q. What is your address, Captain McCoy? A. 4K Alder Drive, Baltimore 20, Maryland.

Q. What is your occupation at the present time. A. I am employed by the Maryland Air National Guard as an aircraft maintenance chief.

36 Q. How long have you been so employed? A. Since May 16 of 1958.

Q. Prior to that time, what was your job and position and status? A. I was employed by the Maryland Air National Guard as a base maintenance supervisor.

Q. When did you first become affiliated with the Maryland Air National Guard? A. In January of 1952.

Q. And in what connection? A. I was assigned as a fighter pilot.

Q. Who made that assignment? A. Final approval, I believe, was by the National Guard Bureau.

Q. Is that the National Guard Bureau of the United States? A. I believe so, yes.

Q. Can you tell the Court what steps were taken in order to bring that about? A. I made application for admittance to the 104th Fighter Squadron located in Baltimore and met an Officer Procurement Board and completed the necessary papers for a commission with the Maryland Air National Guard.

Q. When did you officially start to work? A. In early June of 1956, June 8, I believe is the starting date.

37 Q. And your title at that time was aircraft maintenance chief? A. At that time, it was base maintenance supervisor.

Q. What were the duties of a base maintenance supervisor? A. To supervise the maintenance and care of aircraft,

vehicles, ground support equipment, and the overall supervision of the people that maintain this equipment.

Q. And what did the equipment consist of? A. Various types of aircraft and vehicles and related support equipment.

Q. Do you know who owned the aircraft involved? A. The United States Government.

Q. What about the vehicles? A. The United States Government.

Q. Did you receive a certain grade or job classification at that time? A. Yes; I don't recall exactly what it was at that time.

Q. Now, will you state whether or not at that time you had any military status? A. This is in June of 1956?

Q. Yes, sir. A. I was a first lieutenant in the 104th Fighter Squadron of the Maryland Air National Guard and as aircraft maintenance officer for the squadron.

Q. How had you received that commission, what steps had been taken? A. The commission was continuous from my entrance into the Air National Guard; however, I had been promoted to a higher grade.

Q. What were your duties in the military status that you have just referred to? A. Supervision of maintenance personnel, training in the maintenance area, and the supervision of care of the equipment such as aircraft, ground support equipment.

Q. Can you tell us about your work schedule in the two jobs during the course of the average week, what were your requirements? A. As a base maintenance supervisor, I was employed as an air technician and the normal work week would be from eight in the morning until 4:30 in the evening, except approximately two Saturdays—this is Tuesday through Saturday—and approximately two Saturdays a month, I would be in a military status as a captain in the Air National Guard and as squadron maintenance officer.

Q. I neglected to ask you, Captain, are you here in response to a subpoena served upon you? A. Yes, sir.



Q. May I ask you whether or not as acting maintenance supervisor, the job description of that job is as contained in the Air National Guard Manual (showing manual 39 to the witness)? A. Would you state the entire question?

Q. You have testified that you were acting maintenance supervisor in the month of May 1958. I am asking you if the job description for that particular job is as is contained in the Air National Guard Manual captioned "Civilian Personnel Manual"? A. Are you referring or inferring that I testified to that in this courtroom?

Q. No, I am asking you if what I have now shown you constitutes a job description of the job you refer to as a maintenance supervisor or acting maintenance supervisor?

MR. STEIN: May I ask what you are showing him?

MR. GALIHER: 40-01, Air National Guard Manual, the part which refers to the language "Maintenance Supervisor," page 105.

MR. STEIN: Thank you, that makes it easy to find. Dated when?

MR. GALIHER: This is the month of May 1958, that I am asking him about. The Manual that I have is the one before you, which I believe is dated 1 March 1958, and which covers the time of the accident, May 20, 1958.

THE WITNESS: I am still not quite clear, Mr. Galiher, I have not testified in this Court I was an acting maintenance supervisor.

40 By MR. GALIHER:

Q. Well, you have testified up to this point that you were an aircraft maintenance chief? A. That is correct.

Q. Would you look at page 107 and tell us if that is the job description for the job which you held as aircraft maintenance chief? A. That is correct.

Q. And on what date did you hold this position, Captain? A. Aircraft maintenance chief?

Q. Yes, sir. A. From the 16th of May, 1958, to the present.

MR. GALIHER: May I, instead of reading the two pages, Your Honor, refer them to you at this time, if you please?

THE COURT: This covers under V, 1, 2, and 3, is that it?

MR. GALIHER: I have reference, Your Honor, to that entire page, it has the complete job description.

(The Court read as requested by counsel.)

By MR. GALIHER:

Q. Now, prior to May 16, 1958, were you an acting maintenance supervisor at the base? A. I was the base maintenance supervisor.

Q. And was your title acting maintenance supervisor at that time? A. No, sir; it was base maintenance supervisor.

Q. Base maintenance supervisor. Does this job description commencing on page 105, of the same Manual, refer to your duties as base maintenance supervisor before May 16, 1958? A. It does.

MR. GALIHER: Your Honor, might I likewise show you the job description for this?

THE COURT: Yes.

(The Manual was handed to the Court to read.)

By MR. GALIHER:

Q. Prior to becoming maintenance supervisor, what job description did you have at the base? A. Prior to becoming maintenance supervisor?

Q. Yes, sir. A. I was not employed at that base prior to becoming maintenance supervisor.

Q. As base maintenance supervisor, how many persons did you have under your control and supervision? A. Approximately 75 to 80 people.

Q. What were their duties, Captain? A. Maintaining aircraft, vehicles and other related equipment.

Q. The same vehicles and aircraft of the United States of America? A. They were owned by the United States of America.

42 Q. You mentioned a commission that you held. Did you also at that time hold a Reserve commission in the Air National Guard of the United States? A. I have held a commission in the Air National Guard since January of 1952.

Q. Since January 1952? A. That is correct.

Q. And did in the month of May 1958. Now, drawing your attention to the air technician job that you mentioned, by whom are you paid? A. My check was made on the Treasury of the United States.

Q. And what was the amount of your check in the month of May 1958, in the capacity as maintenance supervisor? A. I don't recall, Mr. Galiher.

Q. May I refresh your recollection by your deposition, page 11, in which you said it was \$7,500 per annum; does that refresh your recollection? A. That is \$7,500 per annum.

Q. Now, did you also receive a salary because of your military status? A. Yes, I received a prorated salary or compensation for certain military duties.

Q. And what was that salary and what were your duties?

43 A. The salary was approximately \$2,000 a year, and it had dual duties in that I was an aircraft maintenance officer for the squadron in the military and I also got paid for flying.

Q. When did you generally get your hours for flying?

A. This could be any day of the week or weekend or evening.

Q. After May 16, 1958, and including May 20, 1958, what was your job status in the civilian capacity? A. I was an air technician, aircraft maintenance chief.

Q. And was that your status on the day of the accident?

A. That is correct.

Q. Now, in your capacity as air technician, from whom did you take your orders? A. Col. Kilkowski.

Q. And what was his title? A. He was the Base Detachment Commander.

Q. From whom did you take orders while in the military status? A. From the squadron commander—could I have my memory refreshed?

Q. Would that be Major Scott, as your deposition set forth? A. Major Scott.

Q. Now, tell us about the uniform that you were wearing in May of 1958 and if it is like the one that you have on at present? A. It would be this or another form of this uniform.

Q. Is that uniform in any way different from the uniform of the United States Air Force? A. I don't think so, no.

Q. I believe you mentioned but may I ask you again, were both of these salary checks that you received, drawn on the Treasury of the United States? A. Yes, sir, they were.

Q. Did you have occasion to participate in summer training duty? A. Yes, sir.

Q. And where was your summer training duty; let us say, in the three or four years with respect to the bases that you were at? A. Prior to 1958?

Q. Yes, sir. A. 1957 was Savannah, Georgia, Travis Field.

Q. Is that a United States Air Force Base? A. Not to my knowledge, it is a City-owned field, Municipally-owned field. And 1956 was the same field, Savannah. 1955 was in Savannah, the same field. 1954 was Otis Air Force Base in Massachusetts.

Q. Was that a United States Air Force Base? A. Yes, it was.

45 Q. Did you also have occasion to take summer training or some training at Chanute Air Force Base, the United States Air Force installation? A. I attended the Maintenance Officers School, Maintenance Officer course at Chanute Air Force Base September 1955 until June of 1956.

Q. Now, on the occasion of the summer training programs, can you tell us what training program was pursued; in other words, who prepared the type of training program?

A. The numbered Air Force that the 104th would be assigned to, in the event of mobilization, provided a training requirement.

Q. Do I understand, then, that the major Air Force Command would provide the training requirements, the major United States Air Force Command? A. Some Air Force Command would provide the training requirements.

Q. When you were at Chanute Field, were you paid through the United States Air Force Finance Office? A. Yes.

Q. Do you know who distributed the vehicles and aircraft to be maintained, to your base? A. It is my understanding that the National Guard Bureau distributed or assigned the particular vehicles and aircraft that were provided by the Air Materiel Command.

46 Q. Is the location of the National Guard Bureau at the Pentagon? A. It is.

Q. Were you required to submit monthly reports with respect to this equipment, to the National Guard Bureau and to the Air Materiel Command? A. Yes, sir.

Q. Tell us what they consisted of. A. One report in particular would be Air Force Form 110, which would be utilization and status on the various aircraft at our base.

Q. Was one report required to be sent to McClellan Air Force Base, a subdivision of the United States Air Force? A. Yes.

Q. What report was required to be sent there? A. The 110 report I just mentioned.

Q. Were other monthly maintenance reports required to be sent to Tinker Air Force Base at Oklahoma City? A. Yes, sir.

Q. What did that consist of? A. That would be an engine report, the number escapes me at the present, and if I am



not mistaken, it was the same 110, a duplicate 110 would be sent to Tinker.

47 Q. What was the 104th Fighter Squadron in the month of May 1958? A. I beg your pardon?

Q. What was the 104th Fighter Squadron in the month of May 1958? Would you explain what it consisted of? A. You mean in numbers of people?

Q. The setup and operation, if you please? A. We were equipped with, I believe at that time, 25 F86H type aircraft and two T-33 type aircraft and one C-47 type. We had approximately 500 persons, various ranks, skills, et cetera, to combine into a fighter squadron. We had certain training requirements to maintain a state of readiness as a fighter squadron.

Q. What do you mean by that? A. As required by the gaining Command or some numbered Air Force that we might be assigned to for mobilization.

Q. Where was the Headquarters of the 104th Squadron? A. It was located at the Martin Airport in Baltimore, Maryland.

Q. And did the planes that you have spoken of, did they belong to the United States Government? A. They did.

Q. Will you tell us if there was an Air Adviser for the United States Air Force attached to your squadron? A. There was.

48 Q. What were his duties, as you understood them? A. His one duty would be liaison between the Air Force or the numbered Air Force and the unit itself, and to work with other Air Advisers in assisting in standardization among the various units, like-type units.

Q. What do you mean by standardization? A. To assist in assuring that like squadrons would be accomplishing the training in a standard manner.

Q. To see that various units were to operate in the same way, would that be one of the reasons? A. Well, not to govern them, but to assist in the standardization within our own squadron.



Q. To make sure that your squadron conducted itself in the way another National Guard unit conducted itself, in accordance with the wishes of the Guard Bureau, would that be one of the things the Air Adviser was to do? A. At least to assist.

Q. Was he also to see that you satisfied the criteria established by the Air Force? A. He is required to make certain reports, I am sure, and to make certain inspections on the quality of maintenance, for instance, of the vehicles and equipment.

Q. Will you tell us whether or not your squadron also had a Senior Air Supervisor attached to the 113th Fighter Wing at Andrews Air Force Base? A. Senior Air Adviser?

Q. Senior Air Adviser, excuse me; and was that  
49 the United States Air Force Base at Andrews Field?

A. That is correct.

Q. What was his connection with your squadron? A. The various squadrons within the Wing, our Wing, each had an Air Adviser attached and the Senior Air Adviser would have Command jurisdiction over the Advisers of each squadron.

Q. And he was the Senior who gave instructions to your Air Adviser? A. That is correct.

Q. Now, what was your status in the month of May 1958, as a pilot, Captain McCoy? A. As a member of the 104th Fighter Squadron, I was a rated flying officer.

Q. Did you have any standards, efficiency standards or otherwise, to maintain at that time? A. Air Force Regulation 60-2 prescribed certain minimums that must be attained by all pilots to maintain standards as laid down by that regulation.

Q. Is this what you have reference to (indicating)? A. That is correct.

MR. GALIHER: At this time, may I introduce this as the next numbered exhibit, this is the Air Force Regulation which Captain McCoy has just referred to, or I should say a photostatic copy.

50 THE CLERK: Plaintiff's Exhibit 4 for identification.

(Air Force Regulation 60-2 was marked Plaintiff's Exhibit No. 4 for identification.)

THE COURT: You are offering this, are you, Mr. Galiher.

MR. GALIHER: Yes, ma'am.

MR. PETTIBONE: No objection, Your Honor.

THE COURT: Admitted, No. 4.

(Plaintiff's Exhibit No. 4 was received in evidence.)

By MR. GALIHER:

Q. Can you refer briefly to some of the efficiency standards you were required to maintain at that time? A. With reference to Air Force Regulation 60-2, all pilots are required to fly a minimum of 15 hours of night flying per year, of which a minimum of 6 must be in one six-month period. Pilots are required to fly a minimum of 10 hours of instrument flying in any one year. Minimum total of 100 hours of all types of flying, of which 35 hours must be in any one six-month period.

Q. Did you have in May of 1958, a federally recognized, by the United States Air Force, Air National Guard commission? A. To the best of my belief, yes.

51 MR. PETTIBONE: I object to the form of the question, it refers to a type of commission which is non-existent. It is either the United States Air Force commission or an Air National Guard commission, or perhaps some other kind of commission. I therefore object to the form of the question on the ground it is misleading and not susceptible to answer in that form.

MR. GALIHER: He did not seem to have any difficulty. Mr. Pettibone can cross-examine him.

THE COURT: I will hear the question.

(The question and answer were read by the reporter.)

THE COURT: I overrule the objection.

By Mr. GALIHER:

Q. Did you at that time receive flying pay as a result of being commissioned and federally recognized as on flying status? A. Yes, sir.

Q. And of course, you were required to give the certain flight time that you have mentioned? A. Yes, sir.

Q. To maintain this rating as a pilot which you have mentioned to us, were you required to do anything other than as outlined in 60-2? A. I believe that 60-2 covers all  
52 of the required minimums to maintain the rating.

Q. Now, did you tell us that on or about May 16 of 1958, you had a duties change in the air technician job as a result of orders received? A. Yes, sir.

Q. From whom were those orders received? A. Col Kilowski.

Q. Then I believe you stated you took over the duties of aircraft maintenance chief? A. That is correct.

Q. You also indicated that those duties consisted of supervision and control of these vehicles and aircraft. When aircraft needed repairs at the base, what would you, or the employees under you, do, Captain McCoy? A. Repair them.

Q. Well, if they needed materiel or spare parts, where would you get the spare parts? A. Through the normal supply channels, I am not too familiar with their internal procedures.

Q. Would you secure the parts from a United States Air Force facility? A. More than likely, yes.

Q. I believe you so testified in your deposition at page 66-67. Suppose one of the aircraft under your maintenance and control was so damaged that you felt it could not  
53 be satisfactorily repaired, what would you do in order to dispose of it? A. I would contact the Air Force Base or Depot that had prime responsibility for that aircraft and so report, in my opinion, it was beyond economic repair.

Q. And would you then wait for a decision from that base as to what should be done with the aircraft? A. That is correct.

Q. Will you tell us if your duties or I should say responsibilities of an aircraft maintenance officer, are also outlined in the Air Force Regulations, Manuals or Orders? A. Yes, the job description is outlined.

Q. On May 16 of 1958, I think you have indicated to us that your status was changed from base maintenance supervisor to aircraft maintenance chief; am I correct as to that? A. That is correct.

Q. Well, did you continue, however, to perform the duties of the other job because of the absence of someone from the base? A. Yes, sir.

Q. And who was the person who was absent and where was he, so far as you know? A. That was Major Jesse D. Mitchell, he was attending schools at Chanute Air Force Base. He would be the base maintenance supervisor, had he been there.

54 Q. When you flew, as you have indicated you did on various occasions, what was the purpose of the flights that you took? A. To satisfy the 60-2 minimum requirements, for one, and as aircraft maintenance chief, or in case of base maintenance supervisor or aircraft maintenance officer, to evaluate the quality of maintenance on the equipment, perform functional check flights on the equipment.

Q. What do you mean by functional check flights on the equipment? A. Technical Order 1-1-300 prescribes certain types of functional checks that are made on aircraft that have undergone certain repairs and/or inspections.

Q. Whose order is that, that you have just identified? A. This is a United States Air Force published TO, I suppose.

Q. TO means Technical Order? A. Yes.

Q. And were they also for the purpose of increasing your pilot rating? A. That is correct.

Q. Will you state whether or not you were required to pass any sort of a physical examination by the United States Air Force periodically? A. I had to have an annual physical examination. This is entered on an Air Force form, the results are entered on an Air Force form, I assume it is an Air Force requirement.

Q. What about the United States Air Force requirement with respect to equipment, with respect to flying and equipment, were you required to periodically pass an inspection with respect to that? A. Could you restate the question, please?

Q. I am talking about an annual United States Air Force examination having to do with your proficiency in flying and the equipment maintained under your supervision and control. A. There is requirement for periodic evaluation of a pilot as to his capability for flying instruments, his general overall proficiency, and these are usually annually. As far as a requirement annually to check equipment, I know of none.

Q. Now, what was your status as far as the month of May, 1958, was concerned respecting the accruing of points toward your possible retirement some years hence, and what were you required to do? A. There are various ways that you can accrue retirement points, one being the number of days that you are on active duty for training, completing certain courses by correspondence, I believe the flying training period that the pilots are authorized.

THE REPORTER: May I read the answer back?

56. (The reporter read the answer to the witness to check it; the witness made no response.)

By MR. GALIHER:

Q. Were all those with respect to the Air National Guard of the United States? A. They apply to the Air National Guard, yes.

Q. And were you also complying with regulations which would provide you with a pension some years hence? A. Yes, sir.

Q. From the United States Government? A. Yes.

Q. In the event of injury in line of duty, what hospitalization benefits were you entitled to? A. I had protection or coverage under the Federal Employees Compensation Act.

Q. Was that as an air technician or was that as a pilot? A. I believe this applies only as an air technician.

Q. Well, would you also be entitled to hospitalization benefits because of your Air National Guard status? A. To the best of my belief, if I was on active duty for training and had some in line of duty injury or illness, I would be hospitalized at the Government expense.

Q. Well, apart from your compensation benefits under the United States Employees Compensation Commission, you were entitled to certain other benefits by virtue of  
57 your status as a pilot, were you not? A. I can't  
answer you, Mr. Galihir, I am not sure. I say again that—

Q. If you are hurt in your military capacity, are you entitled to certain benefits which you otherwise would not be entitled to in your civilian capacity? A. To the best of my belief, I would have full protection if I was hurt in a military capacity, yes.

Q. At page 99 of your testimony, with respect to this, you said:

“Insofar as sick leave in the military status, I don't know the policy, if there is such a thing, but it is my understanding that in the event of injury in line of duty, it is investigated to determine if it is first in line of duty, a line-of-duty-type of injury, and benefits are received from a military hospital, or a designated hos-



pital by the military. This is in the Air National Guard military status."

Does that refresh your recollection? A. Yes.

Q. As a result of the accident of May 20, 1958, were you taken to the United States Public Health Service Hospital? A. Yes, sir.

Q. And who paid your bill for the treatment that  
58 you received there? A. I believe the Federal Government paid it.

Q. Did that also include your doctor who attended you while you were in the hospital? A. I suppose so, I didn't pay anything.

Q. Had you had occasion with respect to other employees, civilian employees at the base being injured while in line of duty, had you occasion to have anything to do with the making of claims for them before the United States Employees Compensation Commission? A. On some occasions, I would testify by signature that one of my subordinates had been injured in line of duty, to have him admitted to the United States Public Health Service Hospital.

Q. Did you make an application for compensation to the United States Employees Compensation Commission as a result of the airplane accident, Captain? A. I don't exactly know what the procedure was that was followed at that particular time. I am positive that at some time we executed the necessary papers.

MR. GALIHER: Your Honor, to eliminate any possible objection, at this time we are extracting the forms from the file which seem to just particularly apply to Captain McCoy and we can then show them to him and have them marked.

59

By MR. GALIHER:

Q. The first form I would like to show you, Captain, has down in the lefthand corner: "Signed by Captain

George J. Windish due to the fact that Captain McCoy's hands are burned and he is unable to sign at this time."

Would you take a look at it and see if that was filled out in your presence? A. I recall that I authorized Captain Windish to sign for me by verbal approval, but I am not clear on the particulars of when it was executed.

Q. You were in the hospital at the time? A. That is correct, yes.

MR. GALIHER: Your Honor, may the entire compensation file be given a number, it has simply been marked for identification and it has not been introduced in evidence and I would like to introduce this document that he has just identified as whatever the number will be, A.

THE CLERK: Plaintiff's Exhibit No. 5.

MR. PETTIBONE: With the Court's permission, I would like to ask the witness just one question.

THE COURT: Very well.

By MR. PETTIBONE:

Q. Captain McCoy, were you familiar with the contents of this form, that is to say, the information which it contained which is typewritten in it, at the time you  
60 authorized Captain Windish to sign it for you? A. I can't be sure, Mr. Pettibone, I don't recall.

MR. PETTIBONE: Your Honor, I have to object to the admission of the form at this stage, at least, of the proceedings because it appears from the witness' own statement that he wasn't familiar with the contents of it at the time it was executed. He has merely testified so far, that he authorized someone to sign something. That is not a complete and proper foundation to make this document material in this litigation at this point.

By MR. GALIHER:

Q. Captain McCoy, is there anything incorrect or untrue on this form? A. I believe all the information is correct; yes, sir.

MR. GALIHER: I would like to offer it into evidence at this time, Your Honor, on the basis of his testimony plus the testimony this morning indicating that this is a part of a file which was made in accordance with the rules and procedure of the Bureau of Employees Compensation Commission.

THE COURT: This file has not been marked, I don't believe, with any number for identification or otherwise.

MR. GALIHER: That would then be 5-A, may it be so marked?

THE COURT: You want this file marked 5 for identification and this Form 5-A, is that correct?

61 MR. GALIHER: Why don't we take this file, which we have now disassembled because we will be using several documents at this time and several later on, and I think it will be better for it to go in this way.

THE COURT: You don't plan on offering 5 for identification, being the record that Mr. Skahan brought?

MR. GALIHER: I intend to offer it, but I intend to offer it in different stages because there are certain documents executed by different individuals who will be here.

THE COURT: The reason I was asking you, I understood you to say you wanted this attached to something as 5-A.

MR. GALIHER: I am sorry, I didn't make myself clear, Your Honor. The whole file I would like to have designated as 5 for identification.

THE COURT: Very well.

MR. GALIHER: Then I would like to introduce this as 5-A, with the thought that I will introduce other documents from the same file with other numbers, 5-A, B, C, D, and so forth.

THE CLERK: Plaintiff's Exhibit 5 for identification and Plaintiff's Exhibit 5-A for identification.

(File of Bureau of Employees' Compensation was marked Plaintiff's Exhibit No. 5 for identification.)

62 (Form C.A.1 dated 30 May 1958, for McCoy, was marked Plaintiff's Exhibit No. 5-A for identification.)

MR. PETTIBONE: At this point, the defendant still objects to the admission of the document on the ground that its pertinency to this litigation has not been shown.

THE COURT: The only document that is offered at this time is this Plaintiff's 5-A, the document just shown to the witness. As I understand it, this document was a part of the documents in this record produced by Mr. Skahan this morning; is that correct?

MR. GALIHER: Yes, ma'am, that is correct.

MR. PETTIBONE: That is true, the documents which were merely marked for identification. The point which the defendant wishes to make here, however, is that all of these documents currently have something to do with some administrative determination of some kind which may have been made by the United States, although that has not yet been developed by any testimony, but there is no showing and no indication that any such administrative determination, even if one had been made, would either be admissible in this proceeding or have any bearing whatsoever upon this proceeding; therefore, it is the defendant's contention that this document has no materiality insofar as the record stands at this point.

63 THE COURT: I will overrule the objection. 5-A is admitted.

(Plaintiff's Exhibit No. 5-A was received in evidence.)

By MR. GALIHER:

Q. I would like to show you next, Captain McCoy, a copy of a letter addressed to you under date of June 6, 1958, which is signed Stuart Rothman, Solicitor of Labor, by William B. Wright, Chief, Subrogation Branch. Would

you please take a look at that and see if that was received by you? A. I recall receiving a letter like this, yes.

MR. PETTIBONE: Your Honor, defendant repeats the same objection, this appears to be part of some administrative proceeding which has not been shown to be material in any way to this proceeding and which, in any event, would not be binding or have effect in this proceeding, in this case.

MR. GALIHER: Your Honor, the testimony shows that this file, in the process and procedure, was not only in accordance with the procedures of the Department of Labor, but in accordance with the procedure of the Employees Compensation Act. This is one of the letters in connection with the handling and processing of the file. The only way Your Honor can get the true picture is to look at these documents.

I would like to offer that as 5-B, please.

THE CLERK: Plaintiff's Exhibit 5-B for identification.

64 (Letter dated June 6, 1958, to Mr. McCoy from Mr. Wright, was marked Plaintiff's Exhibit No. 5-B for identification.)

THE COURT: This is a letter that was written to this witness?

MR. GALIHER: In connection with his compensation claim, yes, ma'am.

THE COURT: By the Labor Department?

MR. GALIHER: Yes, ma'am.

THE COURT: And is from this same file that Mr. Skahan brought here?

MR. GALIHER: Yes, ma'am.

THE COURT: I overrule the objection, admitted.

(Plaintiff's Exhibit No. 5-B was received in evidence.)



By MR. GALIHER:

Q. Are these two letters likewise copies of originals sent to you, under the date set forth, from the same gentleman?

A. I recall getting letters of this nature.

Q. Is this document a copy of an agreement that you signed in connection with your claim? A. It is, yes.

THE COURT: Mr. Galiher, we are going to suspend now.

You can begin with that when we take up again.

65 MR. GALIHER: All right.

THE COURT: I would like to inquire as to how long you think this case will take.

MR. GALIHER: Well, as I understand, Your Honor, there are two witnesses who will give oral testimony on behalf of the plaintiffs, one besides Captain McCoy, that is Col. Kilkowski. We will have other deposition testimony and I understand that Mr. Pettibone has only one witness that he will call. I don't know that he has changed his mind.

MR. PETTIBONE: That is correct; however, I will wait until after the cross-examination of Captain McCoy and Col. Kilkowski, which I regret may be of some length.

THE COURT: Well, tomorrow is a holiday, so we will resume on Wednesday.

MR. GALIHER: You would prefer me to hold these until Wednesday, these documents?

THE COURT: Yes, I don't believe he has examined them as yet.

MR. GALIHER: Yes, he has, he has examined them.

THE COURT: Very well, we can take those up the first thing Wednesday morning.

(Whereupon, at 4:30 p. m., the hearing was adjourned, pursuant to reconvening on Wednesday, May 31, 1961, at 10:00 a.m.)

66 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1236-59

State of Maryland  
for the use of  
Mary Jane Meyer, etc.  
Plaintiff

v.

United States of America  
Defendant

Civil Action No. 1237-59

State of Maryland  
for the use of  
Vance Lewman Brady, etc.  
Plaintiff

v.

United States of America  
Defendant

Civil Action No. 1238-59

Capital Airlines, Inc.  
Plaintiff

v.

United States of America  
Defendant

67

Washington, D. C.  
Wednesday, May 31, 1961

The above-entitled actions came on for further hearing  
before the HONORABLE BURNITA SHELTON MAT-  
THEWS, United States District Judge, at 10 o'clock a.m.,

on motion to determine a preliminary issue which is as follows: Was Captain McCoy an employee of the United States acting in the scope of his employment within the purview of the Federal Tort Claims Act at the time of the occurrence:

### APPEARANCES:

On behalf of the Plaintiffs:

RICHARD W. GALIHER, ESQ.

LOUIS G. DAVIDSON, ESQ.

PETER J. McBREEN, ESQ.

On behalf of Defendant United States:

RUSSELL O. PETTIBONE, ESQ.

HARRY N. STEIN, ESQ.

MILAN M. DOSTAL, ESQ.

Department of Justice

LT. COL. ROBERT A. PRINCE, USAF

MAJOR ROBERT D. BLACKMAN, USAF

Office of Judge Advocate General

68

### PROCEEDINGS

THE CLERK: Capital Airlines v. The United States.

MR. GALIHER: May it please Your Honor, before Captain McCoy resumes the stand, may I simply call your attention, if I may, to two pages from the deposition of General Wilson which you read the other day?

THE COURT: Yes.

MR. GALIHER: The first page is page 57 of his testimony and this question was asked of General Wilson:

"Question. You felt it was desirable for the maintenance officer to have a flying status?

"Answer. I think it is desirable for the maintenance officer as well as the base detachment commander.

"Question. Why is it necessary that it be mandatory that the operations officer have a flight rating?

"Answer: If he is going to be an operations officer and be responsible for the operations of the unit, he has to fly with the unit."

THE COURT: Did you say page 57?

MR. GALIHER: Yes, ma'am. I am now in the middle of the page:

"The operations officer in all Air Force units are required by the UMB to be rated pilots.

69

"Question. Why is it desirable for your maintenance officer to have a flight rating?

"Answer. I feel a maintenance officer should be able to check his own airplanes. I mean if I were a squadron commander, I would insist on my maintenance officer being a rated pilot. It gives the pilots, the other pilots, certainly a safe feeling if they know the guy that is doing the maintenance is also going to fly the airplane."

And then on page 93, the testimony of General Wilson, referring to Captain McCoy, about one-third of the way down:

"Question. Was he not employed pursuant to Title 32, Section 709, under the National Guard, under the law applying to the National Guard, this having to do with caretakers and caretakers and clerks?

"Answer. That is correct."

I remind Your Honor that I introduced that regulation from the United States Code Annotated, Section 709, of Title 32 into the evidence the other day.

Captain McCoy, would you please resume the stand?

Whereupon,

**Captain Julius R. McCoy**

resumed the stand and testified further as follows:

70 Direct Examination—(Resumed)

**MR. GALIHER:** Your Honor, when we suspended Monday, these three photostatic copies of originals from the Bureau of Employees Compensation file had just been exhibited to Captain McCoy. Your Honor will see that two of them are letters from Mr. Rothman by Mr. Wright, from the Solicitor of Labor by the Chief, Subrogation Branch, under date of July 14 and August 28, and the third one is an agreement obviously prepared by the Bureau of Employees Compensation Commission and it is a copy of an agreement signed by Captain McCoy. I have just shown these to Mr. Pettibone, they have not been marked yet for identification.

May I mark them with the same number 5, with the next letters of the alphabet, the three?

**THE COURT:** You may mark them for identification.

**MR. GALIHER:** Yes, ma'am.

**THE CLERK:** Plaintiff's Exhibits Nos. 5-C, 5-D and 5-E for identification.

(Letter dated July 14, 1958, to Mr. McCoy from Mr. Wright, was marked Plaintiff's Exhibit No. 5-C for identification.)

(Letter dated August 28, 1958, to Mr. McCoy from Mr. Wright, was marked Plaintiff's Exhibit No. 5-D for identification.)

71 (Agreement dated October 3, 1958, signed by Julius R. McCoy, was marked Plaintiff's Exhibit No. 5-E for identification.)

**THE COURT:** Will you pass them over to the other side so they may see what they are.

**MR. GALIHER:** Yes, ma'am.

**THE COURT:** The ones that are admitted were, first, Plaintiff's 5-A which is a notice signed by somebody for Julius R. McCoy. Now, this Plaintiff's Exhibit 5-B, which also was admitted, is a letter and while I admitted it, I don't believe this letter comes within the shop book rule.

**MR. GALIHER:** The letter should be read by Your Honor in connection with this agreement which I would now like to offer into evidence.

**MR. PETTIBONE:** I am going to object to the admission of this evidence. I don't believe there has been any showing yet that it is in any way relevant to this proceeding. This apparently relates to some administrative proceeding in the Bureau of Employees Compensation. There is no showing this has any relevancy to the proceeding before the Court which is now on trial. In any event, I believe plaintiff should be called upon to explain in what way it is relevant or material to this proceeding.

**THE COURT:** I am going to reverse the ruling on 72 Plaintiff's Exhibit 5-B and reject it. I don't know what these others are.

**MR. GALIHER:** May I remind Your Honor that this entire file is one which, according to the testimony of the witness Skahan, reflected the usual practice and procedure followed in connection with the handling of a compensation claim involving an employee of the United States. The letter which Your Honor has just referred to is a letter which reflects a procedure followed by the Bureau of Employees Compensation in every case where there is a possibility of a third party action against someone that will permit, if pursued, the United States of America to be reimbursed.

**THE COURT:** Just a minute. This man is on the stand here and he is certainly able to tell you what agreement he entered into, if he entered into any, with the United States. I don't believe it is in the regular course of business for a person to write this letter. I would think that the letter would depend upon each individual case.



MR. GALIHER: Well, I have just asked to introduce the agreement which he entered into with the United States and which he has identified; that is before Your Honor.

THE COURT: What is the number?

MR. GALIHER: That is the last one—there it is, Your Honor.

THE COURT: Well, have you said all you wanted to say about this?

MR. PETTIBONE: No, Your Honor. The agreement is, I believe, part of the administrative proceeding of some kind in the Bureau of Employees Compensation. It is tied into and is part of that, it comes from the Bureau's file in connection with that proceeding. It is part of the file which Mr. Skahan brought to this Court in response to a subpoena.

Now, I don't know what purpose plaintiff has in mind in trying to bring before the Court the administrative proceedings of the Bureau of Employees Compensation in regard to some claim which was apparently filed by Captain McCoy for injuries which he sustained in this accident. I would like to point out, however, to the Court that in the event plaintiff has in mind that any decision made by the Bureau of Employees Compensation of the Department of Labor is res judicata of any issue which may be pending before this Court in this litigation, in accordance with well established authority and in accordance with the rule laid down by the Supreme Court of the United States itself, that may not be used for such purpose in a proceeding of this kind because it has no valid or binding effect upon this Court.

Particularly, I refer to the decision of the Supreme Court of the United States in the case of Pearson v. Williams, that was a case decided back in 1906. The citation of Pearson v. Williams is 202 U.S. 281, 26 Supreme Court 74 608, 50 Lawyers Edition 1029.

THE COURT: And the ruling there was what?

**MR. PETTIBONE:** Well, let me explain briefly the details of this case. In that case, an alien after a hearing before a Board of Special Inquiry had been admitted to the United States. Later, a proceeding for deportation was commenced in which the same issues were adjudicated a second time with an opposite result. The Supreme Court held, and I quote from the Court:

"The board is an instrument of the executive power, not a court. . . . Decision of a similar type long have been recognized as decisions of the executive department, and cannot constitute *res judicata* in a technical sense. . . . The decisions necessarily are made, as we have said, in a summary way, in order to reach the 'prompt determination' declared by the act"—the reference being to the Immigration Act—"to be an object. The board has no power to compel witnesses to attend, but, as was said by the Circuit Court of Appeals, must decide upon such evidence as is at hand or is readily accessible. These are considerations against the likelihood that Congress meant such decisions to be binding upon the Secretary of Commerce and Labor, the superior officer of the members of the board."

75      **I** refer the Court to this case because it appears to be the leading case in a line of similar decisions which have been frequently referred to whenever this problem has arisen before the Court.

**THE COURT:** I don't believe that question has been raised here at all.

**MR. PETTIBONE:** The reason I bring up this point is this, I can't see what purpose the introduction in the evidence of any of the records of the Bureau of Employees Compensation could have upon the proceeding with which we are here concerned or the issue before this Court.

**THE COURT:** I would think it would be what we are all here for, to throw light on what the employment was of the officer and what his status was at the time.

MR. PETTIBONE: Defendant has not objected to the introduction of the statement, the Form C.A.1, I believe it was called, which is the statement of the employee which was executed on behalf of Captain McCoy. We had testimony that he couldn't sign it because of his injuries, the defendant did not object to the introduction of that nor do we; that, I believe, is exactly what Your Honor has in mind by the statement just made. Insofar as it relates to his injuries, we do not object. What we do object to is the introduction of any other record made by the Bureau of

76 Employees Compensation which goes in any way to show what action they took or what conclusions they reached, because that is merely an administrative determination which cannot have any legal effect or standing in this proceeding. We do not, however, object to these other statements by the witness, such as Captain McCoy.

THE COURT: I have concluded to admit Plaintiff's Exhibit 5-E, which is this agreement which the witness identified as having been signed by him. However, this is a photostat, I believe. You have no objection to a photostat being used instead of the original?

MR. PETTIBONE: We have no objection to that, Your Honor.

THE COURT: As to these other offered exhibits, Plaintiff's 5-C and 5-D, the objection will be sustained.

MR. PETTIBONE: Thank you, Your Honor.

(Plaintiff's Exhibit No. 5-B, previously received in evidence, was excluded by the Court.)

(Plaintiff's Exhibit No. 5-E was received in evidence.)

MR. GALIHER: At this point, I would like to call Your Honor's attention to Title 5, Section 751, of the United States Code Annotated.

THE COURT: Title 5, Section what?

Mr. GALIHER: Section 751 which reads:

77

"Disability or death of employee; willful misconduct. The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty."

The balance of that section deals with willful misconduct and is not applicable. I would like to also call Your Honor's attention to the same Title, Section 776:

"Subrogation of United States to employee's right of action; assignment by employee; disposition of moneys collected from person liable:

"If an injury or death for which compensation is payable under this chapter is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the Commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the Commission may require said beneficiary to prosecute said action in his own name.

78

"If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the Commission, he shall not be entitled to any compensation under this chapter.

"The cause of action when assigned to the United States may be prosecuted or compromised by the Commission and if the Commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deduct-

ing the amount of any compensation already paid to the beneficiary and the expense of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury."

By MR. GALIHER:

Q. Captain, I believe you told us that your hospital bills, your surgical bills or medical bills, were paid by the United States as a result of this accident? A. That is my belief, yes.

79 Q. And your compensation continued to go on at the regular rate while you were disabled? A. That is correct.

Q. And you were paid by United States Treasury Department check? A. That is correct.

Q. Captain, I neglected to ask you this on Monday. Would you tell us, please, your history prior to 1952 with respect to flying? A. I graduated from flying school in August of 1944, was commissioned a second lieutenant, aeronautical rating pilot, and retained that until December of 1945, at which time I was separated from the active service and reverted to Reserve Corps status; and with the exception of a short time in the West Virginia National Guard as a second lieutenant in the Infantry, I remained in the Reserve Corps until 1952 when I joined the Air National Guard of Maryland.

Q. And then I believe you gave us your history there, including the training program at Chanute Field, the United States Air Force Base? A. That is correct.

Q. Now you told us also, that you pursued a 40-hour week as an air technician or I should say acting maintenance supervisor and aircraft maintenance chief, and you also told us that there were certain hours in connection with your military status which you were required to pursue. Am I correct as to that? A. That is correct.

80



Q. What were the hours and days of the week that you were required to work in your civilian capacity as a base, or rather as a maintenance supervisor, both regular and acting, as you indicated, and aircraft maintenance chief?

A. They would normally be Tuesday through Saturday. I say normally, because 24 days a year we were in Reserve status, National Guard Military status, and these would normally be on Saturday which was an air technician workday, so other time was used to compensate the air technician program for that Saturday.

Q. On what day of the week did the accident happen? A. This was on a Tuesday, I believe.

Q. Do you recall what time you reported for work that day and in what status or capacity? A. I reported approximately 8 o'clock in the morning as an air technician.

Q. Will you tell us if your status as an air technician continued up to and including the time of the accident? A. That is my opinion, yes.

Q. Do you happen to recall your duties prior to the commencement of this flight on that particular day? A.

Certain administrative duties that are required  
81 every day to establish the order of business for the day.

Q. Would you indicate what they are, if you please? A. The determination of which aircraft would be maintained or gotten ready for flight or repaired, if necessary, and work assignments of various individuals.

Q. How many different types of planes did you have at the base? A. We had three different types.

Q. What were they, please? A. We had 25 F86H aircraft.

Q. What kind of plane is that? A. Single engine jet fighter, single seat. We had two T-33 type aircraft, that is single engine jet trainer, two seats, tandem. And we had one C-47 type aircraft, twin engine, reciprocating engine, cargo aircraft.

Q. How many persons did you have in the month of May to maintain those airplanes, I believe you said there



were 28, am I correct as to that? A. Twenty-eight aircraft.

Q. How many persons did you have who were aircraft technicians, civilian aircraft technicians? A. There were approximately 65 people, 60 or 65 people that were directly concerned with the aircraft maintenance.

Q. How many of those persons were under your supervision and control? A. All of them.

Q. When was most of the flying done, Captain? A. By myself or—

Q. Of those planes, was it on weekends, was it during the week? A. They were flown throughout the week, with the weekend being the heaviest flying period.

Q. And is that because of the persons who were simply in a military status, who would fly on weekends and work on Saturday and Sunday? A. This is basically true, they had jobs other than at this airfield or other than at this Air National Guard installation and their free time to fly or to become a member of the military establishment there, would be on weekends.

Q. Approximately how many would you have out at the base on weekends? A. Flying personnel?

Q. Yes, sir. A. Approximately 35 pilots.

Q. And what about other personnel? A. Approximately 450, total.

Q. Now, the particular flight which resulted in the unfortunate collision, had that been planned before this particular Tuesday? A. I discussed this flight with Col. 83 Kilkowski on the previous Saturday, yes.

Q. What did you tell us Col. Kilkowski's status was? A. Base Detachment Commander.

Q. Was he also an air technician? A. He was, yes.

Q. In a civilian status? A. Yes.

Q. What was the basis for the flight as outlined to Col. Kilkowski on the Saturday before the Tuesday? A. One intention of my discussing this with him at that particular time was to secure approval for the passenger that accompanied me on the flight. I normally probably wouldn't

go to him personally for every flight for approval, because in my own line of duty, I perform certain flights that would not require the individual approval of the Base Detachment Commander.

Q. By the way, did you bring with you records showing the amount of flying time you had prior to May 20th?

A. Yes, I did.

Q. Would you refer to those, if you please, and indicate how much flying time, let us say, you had in the 30 or perhaps 60 days prior, what sort of flights you had taken and for what purpose? A. This would take some arithmetic.

Q. Would you like a pad? A. In the three months' period of April, May and June, of course, I didn't fly after May 20th of that quarter, I flew a total of 59 hours, of which a goodly portion was flight checking the aircraft.

Q. What do you mean by flight checking the aircraft? A. After certain maintenance or certain inspection had been accomplished on the aircraft, they were required by the technical order I referred to on Monday, to be flown by certain personnel that were on orders as check pilots, I was one of those people.

Q. And was that in your capacity as acting maintenance supervisor and aircraft technician? A. That is my belief, yes.

Q. Now, there has been identified into evidence the flight order for this particular flight, that is Exhibit 2. Will you tell us if there were different forms of flight orders used for different types of flights at your base or if that was the type of form that was used in each instance, regardless of the purpose of the flight? A. It is my belief that this form was used for all flights, regardless of the nature of the flight.

Q. Would that also include flights in connection with the maintenance of the plane as a maintenance supervisor or aircraft technician? A. That is correct.

Q. Approximately how often would you fly the  
85 plane involved in this accident or other planes at  
the base for flight checking purposes in your civilian  
capacity? A. By referring to the forms that I brought, I  
could give you exact days on a given month that I did  
fly.

Q. Would you, please? A. In April, for instance, I flew  
on the 8th, a functional check flight, on the 13th, the 23rd,  
the 24th, and the 26th.

In May, on the 4th, the 10th, the 15th, 16th and 17th.  
Those were all functional check flights.

Q. Had you accumulated, up to the time of the accident,  
more than the number of hours that you needed in order  
to maintain your flight status? A. I had accumulated the  
number of total flying hours as outlined by 60-2; however,  
I might not have accumulated some of the specified time,  
such as night or instrument, I am not aware right now  
whether I had accomplished those or not.

Q. This was not a night flight? A. This was not a  
night flight.

Q. And was the flight on the day in question a func-  
tional test flight? A. Not in accordance with the require-  
ment as outlined in Technical Order 1-1-300.

Q. What do you mean by that? A. There is no  
86 requirement by regulation for me to fly a functional  
check flight on this particular airplane at that time.

Q. What was your purpose in flying it on that day? A.  
Well, as aircraft maintenance officer and as, at that time,  
acting base maintenance supervisor, any time I flew an  
aircraft or prior to flying an aircraft, part of my intent  
would be to evaluate the equipment as to its maintenance,  
the intention that I had gotten from various people that  
worked for me.

Q. Would you explain what you mean by that to the  
Court, how you would do that? A. Well, I agree with the  
General that it is desirable to have an aircraft maintenance  
officer that also flies the equipment, because he gets a better  
understanding of the quality of the maintenance, he is

more able to talk to the pilots to uncover or discover certain discrepancies and get better information to more clearly know what the condition of the equipment is.

Q. What you have reference to is the qualifications contained in the Civilian Personnel Manual which has been introduced into evidence as Plaintiff's Exhibit No. 3, which provides, under the job description of "Maintenance Supervisor":

"1. Must possess six years' overall experience in all phases of aircraft maintenance and repair of allied equipment,

87 "2. Completion of an Air Force course in maintenance.

"3. Must have management background, either military or civilian."

That is under the mandatory requirements, then under "Desirable":

"1. Completion of an Air Force maintenance management course,

"2. Be a rated pilot on flying status to enable incumbent to make test flights on assigned aircraft."

Am I correct as to that? A. I don't believe that is the description of the particular job that I had. Would you give me the title again?

Q. This was Maintenance Supervisor and you told us you were acting maintenance supervisor because of the absence of Major Mitchell. A. That is correct. The aircraft maintenance chief was my job description; however, I was maintaining an acting status as base maintenance supervisor.

Q. Yes, sir. Prior to your take-off on this particular morning, May 20th, did you file an Air Force number 113 local flight plan in the operations office of the 104th

Fighter Squadron? A. I think the form is a local flight clearance and that is correct, I did file it.

88 Q. That is this document which has been introduced as Plaintiff's No. 1? A. That is correct.

Q. Was this flight that you took planned in accordance with Air Force regulations? A. It was.

Q. And from start to finish, was it made in conformance with United States Air Force regulations? A. That is correct.

Q. Now, following the accident, without telling us what occurred, were hearings conducted into the accident, number one, first by the United States Air Force, and secondly and subsequently, by the Civil Aeronautics Board? A. That is correct.

Q. Will you tell us the name of the Air Force liaison officer at your base on May 20, 1958? A. The Air Advisor was Major Milton D. Britton.

Q. Were there additional United States Air Force personnel at the base? A. There were.

Q. Can you tell us how many? A. I believe there were three additional people in his office.

Q. Were there two gentlemen by the name of Sgt. Baldwin and Sgt. Storm? A. That is correct.

89 Q. Were they assigned to you for any particular purpose? A. They were not assigned to me at all, no.

Q. Were they members of the United States Air Force? A. They were.

Q. Were they assigned to Major Britton? A. That is correct.

Q. Will you tell us where Major Britton had his office? A. His office was in our hangar, adjacent to the Base Detachment Commander's office.

Q. Is that next to Col. Kilkowski's office? A. That is right.

Q. Can you tell us, if you know, what Major Britton's duties were at the base? A. As I said on Monday, it is my opinion that his duties would be to act as liaison be-



tween our numbered Air Force or gaining Air Force in the event we are mobilized and also coordinate with the other Air Advisers within the Wing to aid in standardization of training throughout the Wing.

MR. GALIHER: Could I please have a copy of Special Orders No. 182?

(Mr. Davidson handed the document to Mr. Galiher.)

By MR. GALIHER:

Q. Is this a copy of your orders to proceed to  
90 Chanute Air Force Base? A. Yes, it is.

MR. GALIHER: May this be marked Plaintiff's No. 6, please.

THE COURT: Yes.

THE CLERK: Plaintiff's Exhibit No. 6 marked for identification.

(Special Orders No. 182, dated 13 September 1955, was marked Plaintiff's Exhibit No. 6 for identification.)

MR. GALIHER: Do you wish to check this? I would like to offer it in evidence.

MR. PETTIBONE: Just let me see it one second.

The copy which you have had marked, Mr. Galiher, is a rather poor photostat. I have a better, more legible photostat, it might be useful for all concerned to use this other copy which is much cleaner and much clearer than the other one, which is blurred.

MR. GALIHER: Thank you very much. May I substitute, Your Honor; I appreciate that very much.

THE COURT: Yes, you may.

MR. PETTIBONE: I have no objection to its admission.

THE WITNESS: I have the original, if you would rather have that.

THE COURT: You are offering this?

91 MR. GALIHER: Well, we won't take yours, you can take it back with you, thank you, Captain.

THE COURT: Are you offering this?



MR. GALIHER: Yes ma'am.

THE COURT: Well, it is admitted.

(Plaintiff's Exhibit No. 6 was received in evidence.)

MR. PETTIBONE: If the Court please, I would like to just note for the record at this time, since the deposition of Captain McCoy has been admitted, that this was a United States exhibit marked for identification in connection with that deposition; it was marked as United States Exhibit No. 2 for identification in the deposition of Captain McCoy. That is the same document which has now been admitted as Plaintiff's Exhibit No. 6.

By MR. GALIHER:

Q. Now, is this document, Captain, which has just been admitted into evidence, more or less the final document of an implementation which starts with the United States Air Force? A. Your question isn't quite clear to me.

Q. Well, is there an overall so-called manning document which starts at the top with respect to orders such as these, from the United States Air Force or the National Guard Bureau? A. Are you asking me if there is a manning document at every level?

92 Q. Well, I am asking you if there was a manning document which started the ball rolling, resulting ultimately in your receiving these orders as represented by Exhibit No. 6? A. There is a manning document for the air technician staff at our installation and a vacancy being created in this manning document allowed me to go to Chanute Field and return as base maintenance supervisor.

Q. Was that document issued to your base by the United States Air Force? A. I am not aware of where the origin of the air technician manning document was.

Q. May I refer to your testimony—

MR. GALIHER: Will Your Honor indulge me, please?

THE COURT: Certainly.

MR. GALIHER: Your Honor, I can't pick it up, may I come back to that and go on to something else now?

THE COURT: Yes.

MR. GALIHER: Will you see if you can find that testimony, please (to Mr. Davidson).

By MR. GALIHER:

Q. Well, did you previously testify, and I hope I will have the page number in a minute, that these orders were cut or issued by the Maryland National Guard probably as the last orders in the chain of command and had 93 been preceded by authority from the Secretary of the Air Force down through channels of the National Guard Bureau to the State of Maryland?

MR. PETTIBONE: If Your Honor please, I object to this question, it calls for a conclusion. There has been no showing the witness has any knowledge or information to support an answer to a question containing such a conclusion.

THE COURT: This is a question which is directed to whether or not he so testified on some other occasion.

And you may answer.

MR. PETTIBONE: Then, I withdraw the objection to that specific question.

THE WITNESS: Yes, I believe I answered that way or somewhat similar to that.

By MR. GALIHER:

Q. Thank you. You have indicated that part of your duties were to perform a flight check on planes assigned to the unit. You have indicated as to what you meant by a flight check. Am I correct as to that? A. Yes.

Q. The overall purpose of a flight check was to evaluate the condition of the equipment for its fitness for flight, was it not? A. Right.

Q. What about air readiness, such as with respect 94 to the instruments within the plane or the radio equipment? A. All of the equipment, the aircraft itself, the engine, the instruments, the controls.

Q. What about the quality of the maintenance at the installation? A. Well, I would naturally be concerned with the cleanliness of the runways, taxiways, et cetera.

Q. And did this require you to fly this equipment and this plane for that purpose and reason? A. Not necessarily.

Q. Was it desirable that you fly the plane in order to evaluate some of these things that you have mentioned?

A. In my opinion, yes.

Q. Now, whenever you made these flights, were these pursuant to flight orders issued under authority of the Department of the Air Force? A. The Department of the Air Force very definitely laid down the requirement; in order to maintain an aeronautical rating, I had to comply with certain regulations issued by the Department of the Air Force.

Q. On page 357 of your testimony, referring to maintenance duties, were you asked these questions and did you answer:

"Question. Did that sometimes involve your actually flying the equipment?"

95 I would like to go back, if I may, and ask you several questions before that, on page 356:

"Question. Now, you have testified previously in this proceeding that part of your duties with the 104th Fighter Squadron was to perform what you called check-outs on planes and instruments assigned to the unit.

"What is embraced in the term check-out as you used it in that connection?

"Answer. The term I believe was flight check.

"Question. All right.

"Answer. I might be corrected on that.

"Question. All right.

"Answer. And the objective was to evaluate the equipment for its fitness for flight or for its air readi-

ness in the case of instruments or radio equipment and to monitor the quality of maintenance performed at the installation.

"Question. Did that sometimes involve your actually flying the equipment?

"Answer. It did.

"Question. As pilot?

"Answer. That is correct.

96 "Question. Now, when you performed such duties involving the flying of equipment for this purpose, was that done pursuant to someone's orders, some superior's orders?

"Answer. It is desirable that an aircraft maintenance officer be able to perform this duty, and I believe that can be found in the appropriate Manuals."

Where you asked those questions and did you answer that way? A. I believe so, yes.

Q. Thank you. From time to time, Captain, did you make training flights? A. Yes.

Q. Were some of these flights made during normal working hours in connection with your air technician job, the hours of which were between 8 and 4:30 p.m., Tuesday through Saturday? A. They wouldn't necessarily be in connection with my air technician job at that particular moment, however, they were made on occasion during the air technician workday, yes.

Q. And is it true that on many instances, it was for the purpose of evaluating the equipment as you have indicated?

A. This would not be a training flight.

Q. Would not be a training flight. But the flight check flights, that you have indicated you made, would be for the purpose of evaluating the equipment? A. That

97 is correct, yes.

Q. On that day, May 20th, were you carried on the roster and rolls as an acting maintenance supervisor and aircraft maintenance chief? A. I was carried as an aircraft maintenance chief and I was assuming the duties of a base maintenance supervisor.

Q. Because of the absence of Major Mitchell? A. That is correct.

Q. What were your duties as aircraft maintenance chief or acting maintenance supervisor when you were piloting a plane? A. Referring again to the 40-01, part of the job description is that it is desirable that the base maintenance supervisor, I believe, be a rated pilot. So my duties, in my opinion, would be to evaluate the equipment as described in the Manual that gives the job description.

Q. Was your status on the day of the flight and during the course of the flight and were you carried on the rolls as an air technician? A. That is correct.

Q. And an acting maintenance supervisor? A. I say again, Mr. Galiher, I was assuming the duties of maintenance supervisor, I was carried on the roll as an aircraft maintenance chief.

Q. Was there any other maintenance supervisor at the base at that time? A. Not for this job description, 98 no.

Q. And you have told us that, in Major Mitchell's absence, you were acting? A. By agreement with Col. Kilkowski, yes.

Q. Can you occupy the status of both a civilian technician and a pilot, at one and the same time, during the course of a flight?

MR. PETTIBONE: I object to that question, that calls for a legal conclusion which is the issue before this Court.

MR. GALIHER: I believe he knows what he can do, Your Honor, he is the man flying the plane, he is the acting maintenance supervisor, he is the aircraft technician, he also is a captain in a military status. I submit if he is not qualified to answer that question, then no one would be able to. I certainly think Your Honor is interested in getting that information.

THE COURT: You are not to answer the question at this time.

Will you read the question?

(The question was read by the reporter.)

THE COURT: I will sustain the objection to that question.



By Mr. GALIHER:

99 Q. In your status as you have indicated, under the Section 709 caretaker status, what other duties as an acting maintenance supervisor or as an aircraft technician did you have at the base? A. I was on orders as a flight check pilot, test pilot, part of my duties would be to flight check the aircraft.

Q. And did the job, in your opinion, require you to fly this plane and other planes to observe the condition of the plane and the field? A. As a rated pilot and as the maintenance supervisor or acting maintenance supervisor, I felt I was in a position to better evaluate the equipment and the maintenance being performed than anyone else on the base, I don't know that there is a legal requirement or definite requirement for the maintenance supervisor to fly the aircraft, but I felt and I think the Commander felt that I would have a better understanding of the quality of maintenance than anyone else on the base.

Q. Now, you had a military pilot's rating, did you not? A. That is correct.

Q. That authorized you to fly the United States-owned planes at your base, did it not? A. That is correct.

Q. If I had a civilian pilot's rating, would that authorize me to fly the planes at your base? A. No.

100 Q. But does that have anything to do with the purpose for which you might be flying at a given time? In other words, the fact that you had a pilot's license in the Air Force permitted you to fly this particular plane, did it not? A. That is correct.

Q. It did not prescribe the use that you were to make of the plane at a given time, did it? A. The aeronautical rating? No.

Q. And sometimes you might fly it in your capacity as a maintenance supervisor or aircraft technician, and sometimes you might fly it in your status as a military pilot, is that right?

MR. PETTIBONE: If the Court please, the same objection



as the previous one, this calls for a legal conclusion, that is the issue that is before this Court.

MR. GALIHER: I think certainly he knows, as a result of his training of many years with the Air Force, with his reading of rules and regulations, what he can do and can't do and what his status is, Your Honor.

THE COURT: This other question was directed to what he could do, not what he did do, and therefore I sustained the objection to it.

Now, this question has to do with what he did, I believe it uses the word "might." Read the question.

(The question was read by the reporter.)

MR. GALIHER: I am asking what he did at various  
101 times.

THE COURT: You may answer, with this amendment.

THE WITNESS: It is my opinion I flew in both of those statuses.

By MR. GALIHER:

Q. At the time of the accident, were you flying it in your capacity as a caretaker of Government property? A. That is my opinion, yes.

MR. GALIHER: Would Your Honor excuse me once more?

MR. PETTIBONE: May I ask the reporter to read the last question and answer?

(The reporter read the last question and answer.)

MR. PETTIBONE: I move that question and answer be stricken from the record, that calls for a legal conclusion, it is the issue that is before the Court.

MR. GALIHER: I will ask him to give the reason for his answer, Your Honor, and you can evaluate it. Again I say this man has identified himself as a caretaker under 709 of the United States Code Annotated, he has indicated that he occupies a civilian status as well as a military status, and he has indicated that sometimes he occupies

one and sometimes the other; and certainly he is in a position to know, as is no one else.

102 THE COURT: Well, I will permit the answer to stand. At this time, we will take a recess of five minutes.

(A short recess was taken.)

By MR. GALIHER:

Q. Captain McCoy, General Wilson has testified in his deposition that you were employed pursuant to Title 32, Section 709, National Guard, under the law applying to the National Guard, this having to do with caretakers and caretakers and clerks. Does that constitute a correct description of your civilian job? A. I read that, yes, that is my opinion.

Q. Were there some occasions, in connection with your flight checking of airplanes, when it was absolutely necessary to take them off the ground because you could not check maintenance equipment in any other way? A. That is correct.

Q. Can you give us an account of the flying that you did of different planes at the base, apart from the one involved in this accident?

MR. PETTIBONE: If the Court please, I am going to object to that question; I can't see any relevancy to this proceeding at all to have him discuss what other flying he did. He has already stated he had a considerable amount of flying experience before the day in question. I don't see the necessity of going over all the details of that, I see no relevancy.

103 THE COURT: Read the question.

(The question was read by the reporter.)

MR. GALIHER: In order to check the maintenance equipment and so forth, that is what I have in mind, Your Honor.

THE COURT: The objection is overruled. You may answer.

**THE WITNESS:** Again referring to this document that I brought with me, which is a record of my flying time, on the 8th of April, I flew an F36E, performed a functional check flight. On the 13th of April, I flew an F86H for functional check flight. I am trying to just pick out the different types.

**By Mr. GALIHER:**

**Q.** Yes. **A.** On the 9th of July of 1957, I flew a T-33A, performed a functional check flight. Those three types, at least.

**Q.** I think that will do without you looking any further in the record. Now, at the time of the accident, I think you have told us that you were in the status of an acting maintenance supervisor and aircraft maintenance chief. Does that mean that you were receiving pay in that capacity on that day and at the time of the flight? **A.** That is correct.

104 **Q.** Did you receive any flight pay for the day of the accident? **A.** I couldn't attempt to tell you just what portions of the flying time was labeled as that part that would qualify me for flight pay. I don't know that particular day to be —

**Q.** I see. Did the United States Air Force designate a flying area in and around your base for your planes to use? **A.** I believe that the area is defined by the local Commander, certain regulations require him to define an area.

**Q.** Were you flying within the area at the time of the accident? **A.** I was.

**Q.** Did you have a number of different titles in connection with various jobs which you performed at the base in 1958, for example, you have indicated that you were an aircraft maintenance chief. Were you a member of the Federal Recognition Board? **A.** I don't recall exactly what all the additional duties were, I was on the Standardization Board.

Q. Was that a Federal or State Board? A. These would all be local Boards.

Q. What about the Federal Recognition Board? A. I don't recall whether I was on that Board or not.

Q. What about the Air Force Aid Society Board?  
105 A. I belonged to that.

Q. Was that a Federal Board? A. That was a local Board. I don't know the authority or the requirement to establish these Boards.

Q. Oh, I see. I won't ask you about those, then.

You had a gentleman riding with you at the time of the accident, by the name of Chalmers? A. That is correct.

Q. Were you trying, in addition to the other reasons for the flight that you have indicated, were you also interested in interesting him in the United States Air Force Aviation Cadet program? A. I had talked to him on several occasions about the possibility of joining the Air Guard as opposed to the Ground Guard that he was in at the time of the accident.

MR. GALIHER: Excuse me, Your Honor.

Your witness. Thank you, Captain.

Cross-examination.

By MR. PETTIBONE:

Q. Captain McCoy, have you been made a party to any litigation arising out of the accident on May 20, 1958? A. There are several suits pending, I understand, that have my name on them.

Q. Are you a party in any of them? A. I am not familiar with your legal term, Mr. Pettibone, could you tell  
106 me exactly what that means?

Q. Are you a defendant, have you been served with a summons and complaint in any actions in any Courts arising as a result of this airplane accident on May 20, 1958? A. I have.

Q. Could you tell us in about how many actions you have been made a defendant in such manner? A. I don't know the exact number, Mr. Pettibone.

Q Approximately how many? A. I think there are probably 10 or 11 different lawsuits that probably have my name on them in some part, some capacity, rather.

Q. In fact, weren't you a defendant in those cases, weren't you the party being sued along with other defendants? A. Yes, I think so.

Q. Is the United States of America also a defendant in those actions in which you have been sued as a defendant?

A. That is my understanding, yes, sir.

Q. Are you familiar with or have you been apprised of the provisions of Title 28, United States Code, Section 2676, which provides in essence that any judgment returned against the co-defendant, the United States, in those actions, will relieve you of any liability or any claims in those actions? A. Would you state your question again, please?

MR. PETTIBONE: May I ask the reporter to read the question?

(The question was read by the reporter.)

THE WITNESS: That is my understanding, Mr. Pettibone, I have never had this explained to me in detail by anyone.

By MR. PETTIBONE:

Q. Are you represented by counsel in the actions which have been brought against you in these other actions? A. This is my understanding, yes.

Q. Who is your counsel in those cases? A. Mr. Mudd.  
THE COURT: Mister who?

THE WITNESS: Mudd, M-u-d-d. I may be completely wrong, that is my understanding, that Mr. Mudd has been retained as my counsel.

By MR. PETTIBONE:

Q. Did you retain him? A. Not personally, no.

Q. Well—

THE COURT: Just one moment, Mr. Pettibone. Just one moment, please.

Would you put the loud speaker on the officer there (to the Marshal).



By MR. PETTIBONE:

Q. Who did retain Mr. Mudd as your counsel in  
108 those cases? A. Let me go back and say that I am  
not completely sure that Mr. Mudd is retained to  
represent me in those cases. I will say that Mr. Mudd has  
advised me or has, at least during the depositions, has  
been counsel and I am not completely sure just exactly who  
is paying him or who has retained him; from my under-  
standing, it is the State of Maryland.

Q. Well, now, there have been some proceedings in those  
cases to which you are a party, such as the taking of depo-  
sitions, have there not? A. Yes, there has.

Q. And you have been obliged to appear at those pro-  
ceedings? A. Yes, I have.

Q. Who appeared as your counsel at those proceedings?  
A. Mr. Mudd.

Q. Did anyone else appear as your counsel? A. Not to  
my knowledge.

Q. Did you ask Mr. Mudd to attend as your counsel at  
those proceedings? A. I think Mr. Mudd asked me to at-  
tend.

Q. Have you any idea how Mr. Mudd came to be at these  
proceedings as your counsel? A. As I stated, it is my un-  
derstanding that he is retained by the State of Mary-  
109 land as my counsel.

Q. Well, you say the State of Maryland; just who  
in the State of Maryland do you think retained him? A.  
Possibly at the advice of the Military Department.

Q. Did you make an application of the Military Depart-  
ment of the State of Maryland to provide you with counsel?  
A. I made no formal application, no.

Q. Did you make an informal application? A. I don't  
recall asking them directly to provide counsel, no.

Q. Did you ask anyone indirectly to provide you with  
counsel? A. I don't know how I would ask indirectly, I  
am not trying to be evasive, I am just not—

Q. Did you ask anyone at any time, after you were served



with process in these cases, to represent you as counsel in these cases, either in writing or verbally? A. No.

Q. Did you ever discuss the matter with anyone? A. The matter of having counsel or—

Q. The matter of having counsel and the matter of your being sued in these actions? A. Yes, I discussed the matter of having counsel.

Q. Who did you discuss it with? A. With Mr. Mudd, for one.

Q. How did you come to discuss it with Mr. Mudd? In other words, did you get in touch with him or did he contact you? A. I was informed that Mr. Mudd had been retained.

Q. Who informed you that he had been retained? A. The Military Department of the State of Maryland.

Q. Who, in the Military Department of the State of Maryland? A. I recall several conversations with Col. Kilkowski or a few conversations with Col. Kilkowski, for one; General Reckord for one, General Ruhl who is no longer with the Military Department.

Q. Did any one of these gentlemen you have named advise you that Mr. Mudd had been retained as your counsel? A. Yes.

Q. What was the position of these gentlemen, by whom were they employed? A. General Reckord is the Adjutant General of the State of Maryland, General Ruhl at that time was Assistant Adjutant General, Col Kilkowski is and was Base Commander at Martin Airport.

THE COURT: Who is being sued over there, besides you and the United States?

THE WITNESS: That is all I know, Your Honor.

111 Capital Airlines might be sued over there, also.

By MR. PETTIBONE:

Q. Have you discussed your position as a defendant in those cases in which you have been sued, with Mr. Mudd, your counsel? A. Yes, I think so.

Q. About how many times have you discussed it with him? A. Probably three times, two or three times.

Q. Have you discussed it with any other lawyers at any time?

MR. GALIHER: Are you talking about position or conversation that he had with other lawyers?

MR. PETTIBONE: I will make the question more specific.

By MR. PETTIBONE:

Q. I am referring, Captain McCoy, to any discussions concerning your status or your position as a defendant in these actions in which you have been made a defendant, arising out of this accident? A. Yes, probably so.

Q. Well, with what other persons have you so discussed it? A. Mr. Clayton Dietrick.

Q. Who is he? A. He is, I believe, one of the  
112 Assistant Attorney Generals of the State of Maryland.

Q. All right, are there any others? A. That is a rather broad question, Mr. Pettibone; have I discussed this with any lawyers. In what connection, is there some way—

Q. In connection with your status as a defendant in those actions? A. I don't know of any lawyers that actually have discussed my status as a defendant in the actions.

Q. Have you ever discussed with Mr. Mudd or Mr. Dietrick, the fact that the United States of America is also a defendant in those actions in which you are a defendant? A. Yes, at least with Mr. Mudd.

Q. Did you have any discussion with those lawyers concerning the fact that you were employed as an air technician in the 104th Fighter Squadron of the Maryland Air National Guard? A. I don't recall any specific reference to it, those men were aware I was an air technician.

Q. Are you aware of the fact that those cases are being prosecuted against the United States of America by the theory that you are an agent of the United States of America because of your employment as an air technician? A. I am aware that I am named with the United States of Amer-

ica as a defendant. Why we are named together, I  
113 don't know, whether it is because I am an air technician or not, I don't know that.

Q. Perhaps you misunderstood my question. My question again is this: Are you aware of the fact; do you know that those actions in which you are a defendant are being prosecuted against the United States upon a theory that you were an agent of the United States because you were employed as an air technician? Do you or do you not know about that? A. I don't know why the suits were entered with me as a defendant with the United States, I assume they would be for that reason.

THE COURT: Would you read the answer?

(The answer was read by the reporter.)

By MR. PETTIBONE:

Q. Captain McCoy, are you aware of the fact that these suits in which you and the United States are co-defendants were entered on the theory that while you were flying the plane at the time of the accident, you were an air technician employed by the State of Maryland? A. I can only say, Mr. Pettibone, that apparently the plaintiffs feel that I am an agent or am an employee of the Federal Government, in my opinion.

Q. Are you finished? A. Yes.

Q. An employee of the Federal Government for  
114 what reason? A. I have no knowledge.

Q. Captain McCoy, when did your military service begin? A. I believe it was February 6, 1943, when I was first inducted in the Army.

Q. That was into the United States Army? A. That is correct.

Q. What was your rank at that time? A. Private.

Q. And with what unit did you serve? A. At that time, shortly after I was inducted, I was assigned to Camp Wheeler, Georgia, for infantry basic training.

Q. And after you completed that training, what happened? A. After I completed the infantry basic training, I transferred to the then Army Air Corps and after a series of tests, I went through flying school.

Q. Where did you attend flying school? A. My first flying school phase, flying phase, was at Tucson, Arizona, and the second phase was at Bakersfield, California, and the third phase was at Phoenix, Arizona. And in Phoenix, I was commissioned and given an air officer's rating as a pilot.

Q. How much time did this training consume, before you were given a commission? A. Approximately  
115 14 or 15 months after I entered the Air Corps until I was commissioned.

Q. What commission did you receive? A. Second lieutenant.

Q. Was that in the United States Army? A. I believe it was called Army of the United States.

Q. Army of the United States? A. Yes.

Q. Did you have a rating as a flying officer? A. Yes.

Q. All right. What service did you perform after that?

A. In, I believe, September, the latter part of September, I attended another school to be transitioned into B-17's as a pilot.

Q. What year was that? A. 1944.

Q. Continue. A. Early 1945 or approximately late December, 1944, I went to another training school at Tampa, Florida, for crew training overseas, to train the crew for operation overseas. And then in April of 1945, I was transferred to Laredo, Texas, with a short stop-over at Alexandria, Louisiana, where I flew B-17's, gunnery evaluation program, until the end of the war, at which time I was separated and returned to my home as a civilian.

116 Q. What was the date when that military service terminated? A. It was, I believe, about the 10th of December, 1945.

Q. Did you at any time thereafter re-enter the military service? A. Well, I had an unbroken period of either

Reserve duty or National Guard duty from that day to this. In addition, I have attended some Air Force schools, three, to be exact.

Q. Well, fill us in with the details of the military service which you performed in that status, then, continuing on from 1946. A. I was an inactive Reservist until, I believe, about 1949 when I joined the West Virginia National Guard and participated in their drills and other training, and then I became active again and in 1952—

Q. Let me interrupt you just one moment. I wish you would tell us more about your service with the West Virginia National Guard. What was your rank? A. Second lieutenant and I was a platoon leader.

Q. In which branch of the service did you serve? A. This was with the West Virginia National Guard.

Q. Were you in the infantry? A. Infantry.

117 Q. Infantry? A. Yes.

Q. This was the Army National Guard? A. That is correct.

Q. How long did you serve as a second lieutenant in the infantry? A. I don't recall exact dates that I was active, it wasn't very long, because of my employment I was forced to leave the area so I had to become inactive.

Q. Well, approximately when—did you go into inactive duty again? A. That is correct.

Q. Do you remember approximately the date of that? A. That was probably in October of that year, 1949.

Q. And what military service did you perform after that? A. I was inactive until January of 1952, when I joined the Maryland Air National Guard and I have been in the Maryland Air National Guard since then. In 1944, I attended jet indoctrination school at Craig Air Force Base at Selma, Alabama, for approximately 8 weeks' duration and in 1945, in May of 1945, I believe—

MR. GALIHER: Do you mean 1954 or 1955?

THE WITNESS: 1954, excuse me, in 1955 I attended the Jet Instrument School at Perrin Air Force Base in Texas



and returned to Baltimore in, I believe, July of that year and in September of 1955, I entered into the maintenance officers' course at Chanute Air Force Base, Rantoul, Illinois, returned to Baltimore to accept an air technician's job with the Maryland Air National Guard in early June 1956, that job I held to this date with one status change.

By MR. PETTIBONE:

Q. Now, in what rank or grade were you first appointed or commissioned in the Maryland Air National Guard?  
A. Second lieutenant.

Q. Were you subsequently promoted? A. I was.

Q. When was that? A. October of 1952, I was promoted to first lieutenant; on July 1 of 1956, I was promoted to the rank of captain.

Q. Did you make application in 1952 for a commission in the Maryland Air National Guard? A. I don't recall exactly the procedures, I was interviewed by the Base Detachment Commander and subsequently met an Officer Procurement Board and Federal Recognition Board, I suppose. I made application by virtue of walking in the door and asking them some information and if I could join.

Q. Well, did you fill out any application form? A. I am certain there must have been some paperwork that was necessary to be executed.

119 Q. And were you then issued a commission by the Maryland Air National Guard? A. I was transferred from the West Virginia National Guard or released from the West Virginia National Guard and went on the rolls of the Maryland Air National Guard as commissioned officer with no break in service.

Q. Were orders issued by the Maryland Air National Guard appointing you a second lieutenant in it? A. Yes.

Q. Was Federal Recognition extended to you in that capacity? A. Yes, the Federal Recognition was received, I believe, in April of that same year.

Q. That was subsequent to your appointment as second



lieutenant in the Maryland Air National Guard? A. That is correct, retroactive to the date of enrollment in January.

MR. PETTIBONE: I would like to have this document marked as Defendant's Exhibit No. 1 for identification.

THE COURT: Very well.

THE CLERK: Defendant's Exhibit 1 for identification.

(Extracts from Orders to Capt. McCoy was marked Defendant's Exhibit No. 1 for identification.)

120 By MR. PETTIBONE:

Q. Captain McCoy, I show you a document which has been marked as Defendant's Exhibit No. 1 for identification. Will you look at it and tell us if you know what it is? A. This appears to be a composite of certain general orders issued from the Military Department of the State of Maryland that concern myself.

Q. Might they be termed extracts from orders? A. Extracts from orders, yes.

Q. What do the orders provide, what orders are they? A. General Orders No. 47 says that the National Guard Bureau has extended Federal Recognition to following officers of the Maryland National Guard effective dates indicated. It has my name as a captain, date 1 July 1956.

General Orders No. 24, Federal Recognition for myself as a second lieutenant, dated 31 March 1952.

General Orders No. 9 has my name with the words "To be second lieutenant, Air Force, with rank from 25 January 1952," which apparently is the initial order that commissioned me in the Maryland National Guard. No. 9 also assigns me as a pilot with the 104th Fighter Squadron.

MR. PETTIBONE: Thank you. If the Court please, I would like to offer in evidence as Defendant's Exhibit No. 1, the document which has just been identified.

THE COURT: Have you shown it to Mr. Galiher?

121 MR. GALIHER: Yes, ma'am, we have no objection.  
The Court: Admitted.

(Defendant's Exhibit No. 1 was received in evidence.)

By MR. PETTIBONE:

Q. Now, you have stated you received a rating as a flying officer, first, in what year was that? A. The 4th of August, 1944.

Q. And did that rating as a flying officer continue in effect at all times up to May 20, 1958? A. I assume so, Mr. Pettibone. However, I did not fulfill the requirements as outlined in Air Force Regulation 60-2, consequently, I was not eligible to fly some of that period.

Q. I see. Was there a period of time, then, when you were not eligible to fly? A. There was a period of time when I didn't fulfill the requirements, that would be from December of 1945 until I was requalified in 1952.

Q. Did you requalify in 1952? A. Yes, sir.

Q. Was that by virtue of a test which you took or in what manner did you requalify? A. I had certain training to renew my proficiency in the aircraft and check-out rides with instructor pilots, to be assured that I was capable of resuming my flying career.

Q. Well, did you continue in flying as a rated officer from 1952 until May 20, 1958? A. I did, yes.

Q. In order to maintain that rating, did you have any qualifications to meet or did you have to do anything? A. Yes, as I previously stated, 60-2, Air Force Regulation 60-2 requires certain minimums in night flying, instrument flying, total time, and has to be spaced so that the minimums would fall within a certain calendar portion of the year.

Q. Did you meet those requirements? A. I did.

Q. At all times? A. Yes, sir.

Q. Did you perform the flying which they require? A. Yes, sir.

Q. Are those flights called proficiency flights? A. I believe that is the general term that is given to them.

MR. PETTIBONE: May I ask the Court's indulgence one moment to speak to Mr. Galiher?

THE COURT: Yes, certainly.

(Mr. Pettibone conferred with Mr. Galiher.)

MR. GALIHER: May I do so at this point?

123 MR. PETTIBONE: I have no objection.

MR. GALIHER: Mr. Pettibone would prefer that I introduce this as another exhibit, which is the Certificate extending Federal Recognition. May this be marked No. 7 and introduced into evidence, if the Court please?

THE COURT: Yes.

THE CLERK: Plaintiff's Exhibit No. 7.

THE COURT: Admitted.

(Air Force Regulation 45-2, dated 13 April 1949, was marked Plaintiff's Exhibit No. 2 and received in evidence.)

By MR. PETTIBONE:

Q. Did you receive pay for being commissioned an officer in the Maryland Air National Guard? A. Yes.

Q. Did you receive additional pay for holding a rating as a flying officer? A. Fulfilling the obligations, yes.

Q. What additional pay did you receive, what was the nature of it or on what was it based? A. I received pay, I think, at the same rate as the regular Air Force officer for certain periods of time, certain amount of flying time that I would accomplish in training.

Q. Now, to maintain your rating, you performed proficiency flights from time to time, is that correct?  
124 A. Correct.

Q. So that you would receive additional pay; would this be called flight pay, incidentally? A. That is correct.

Q. Would you receive flight pay for the performance of these proficiency flights? A. I would receive flight pay up to a certain maximum for participating in proficiency flights.

Q. Well, in other words, you had to accumulate flying time in order to get the additional pay? A. Yes, I wouldn't have gotten the flying pay if I hadn't flown.

Q. How many hours flying time did you actually have on May 20, 1958, or if you don't remember exactly, approximately? A. Total?

Q. Total. A. I have the figure here, I think it is 1902 hours of military flying time, and 10 minutes.

Q. You say there were certain requirements which you had to meet in order to keep your flying status or rating current, is that correct? A. That is correct.

Q. And did you meet those requirements at all times?

A. I did.

125 Q. If you had not met those requirements, what would have happened? A. I would have probably or no doubt would have met a Flying Evaluation Board and they would have made, probably, certain recommendations to the National Bureau and, subsequently, to the Air Force, and some action would have been taken.

Q. What action would be taken in such cases? A. It depends on the peculiars of the case or the individual concerned. It might be that he meets a Flying Evaluation Board for non-compliance due to a personal injury, or due to some other thing that might not permit him to fly, in which case the action would be to put him in another category so that he would not have to comply with the minimums. If it is non-flying for no apparent reason or for no physical difficulties, they might demand that the man be removed from flying status.

Q. Well, in the event a person was placed in such category, it would result in a loss of flight pay by the individual, is that right? A. Possibly, yes.

Q. Now, you have stated that on May 20, 1958, the day of this accident, you were commissioned as a captain in the Maryland Air National Guard, is that correct? A. I held that commission, yes.

126 Q. Did you hold any other commissions of any kind or was that the only one you held? A. As far as I know, the one commission was all that I held.

Q. Now, you were also, on May 20, 1958, employed as an air technician, as you have stated. When did you first become so employed? A. I believe that was about the 8th of June, 1956.

Q. Did you apply for that employment? A. Yes.

Q. To whom did you apply? A. To Major Scott.

Q. What was his position? A. He was Squadron Commander at that particular time.

Q. Squadron Commander of what? A. 104th Fighter Squadron.

Q. And is that a unit of the Maryland Air National Guard? A. That is correct.

Q. And was at that time? A. That is correct.

Q. Did you make a written application for employment?  
A. No.

Q. In what job capacity were you first employed, then?

A. As base maintenance supervisor, this is assuming  
127 that the job description has not changed to this  
date.

Q. Well, I am referring to the date when you were employed, what was the title of the job at that time? A. I don't recall whether it has been changed or not.

Q. That was in 1956? A. That is correct.

Q. And how long did you continue in that particular job in which you were so employed? A. Until May 16 of 1958.

Q. You remember what your pay was in that job during that period of time? A. I think my starting pay as an air technician was probably around seven thousand five—\$7,000 a year.

Q. What happened on May 16, 1958? A. I had a job change, job title change from base maintenance supervisor to aircraft maintenance chief.

Q. Did that result in any change in your pay status?  
A. No, sir, not at that particular moment, no.

Q. Did you continue to receive the same amount of pay? A. That is correct.

MR. PETTIBONE: May I ask that this document be marked Defendant's Exhibit No. 2 for identification.

THE CLERK: Defendant's Exhibit 2 for identification.



128 (Extract from Special Orders No. 93, dated 13 May 1958, was marked Defendant's Exhibit No. 2 for identification.)

By MR. PETTIBONE:

Q. I now hand you a document marked Defendant's Exhibit No. 2 for identification. Will you tell us what it is, if you know? A. This is a copy of the Orders issued by the Office of the Adjutant General of the State of Maryland that change my job title from base maintenance supervisor to aircraft maintenance chief.

Q. Does it indicate any effective date of the change? A. Effective May 16, 1958.

MR. PETTIBONE: I would like to offer in evidence Defendant's Exhibit No. 2, the document which has just been identified by the witness. I might also add for the record that it was previously marked as United States Exhibit No. 2 at the time Captain McCoy's deposition was taken.

THE COURT: Admitted.

(Defendant's Exhibit No. 2 was received in evidence.)

By MR. PETTIBONE:

Q. Now, on May 16, 1958, when you became aircraft maintenance chief, who was your immediate supervisor? A. Col. Kilkowski was my immediate supervisor at the base; however, Major Mitchell would eventually become the supervisor when he returned from school.

Q. Well, when did he return from school? A. In November, I believe, of 1958—1957, excuse me—no, 1958.

Q. Well, is it correct, then, that at all times during the month of May, 1958, Col. Kilkowski was your immediate supervisor in your employment as aircraft maintenance chief? A. That is correct.

Q. Now, I believe you have testified that you also, on and after May 16, 1958, assumed the duties of base maintenance supervisor? A. That is correct.



Q. Was that by any means written—

MR. GALIHER: I think the testimony was he continued to act in that capacity, not that he assumed them.

MR. PETTIBONE: Yes, I think that is correct.

By MR. PETTIBONE:

Q. You had been base maintenance supervisor prior to May 16th? A. Yes, sir.

Q. And you continued to perform those duties after that date? A. Yes, sir.

130 Q. By whose order did you do that? A. This is by agreement with Col. Kilkowski.

Q. Were any written orders issued to that effect that you know of? A. That I be made acting base maintenance supervisor?

Q. To continue to perform the duties of base maintenance supervisor? A. I had no written orders to that effect, no.

Q. Well, did Col. Kilkowski issue verbal orders to that effect to you? A. That is right.

Q. When did he issue them? A. On or about the 16th of May, I don't recall the exact date.

Q. Do you remember when and where you were at the time he issued those orders? A. In his office.

Q. You remember just what he said about it? A. Not exactly, no.

Q. How did the subject come up? A. Well, the subject came up because of the proposed job status change.

Q. How many people does the base maintenance supervisor supervise at this installation? A. About 75 or 80 people, I think.

131 Q. Were they notified that you were the base maintenance supervisor? A. I don't recall if they were or not. That I was changed, you mean, from one status to another?

Q. No, were they notified that you would continue to perform the duties of base maintenance supervisor? A.

I think this is understood, I do this now when Major Mitchell is not there.

Q. Well, I asked you, were they notified? A. I don't know that they were notified personally.

Q. Now, in either capacity, that is to say, either as aircraft maintenance chief or as base maintenance supervisor, on May 20, 1958, was Col. Kilkowski your immediate supervisor? A. That is correct.

Q. To what extent did he supervise your work in those positions or in what manner did he supervise your work in those positions? A. On that particular day?

Q. Yes. A. Well, as any manager, I was responsible to provide him with a product or with quality maintenance, et cetera.

Q. Did he physically observe the performance of your work at times? A. Yes.

Q. Did he from time to time issue you orders or  
132 directions or instructions? A. Sure he did.

Q. Did he express approval or disapproval with the way you were doing your job at times? A. There are probably instances where he would express approval and other times, disapproval, yes.

Q. Were you under the supervision—under anyone else's supervision at the same time? A. Well, he had supervisors or superiors that we were both under.

Q. Well, did anyone other than Col. Kilkowski give you orders or instructions with respect to your work, in the manner in which you just testified? A. No, I was responsible directly to him as an air technician.

Q. In other words, he was the sole person to whom you were directly responsible in that manner, is that correct?

A. Yes, he was the sole person to whom I was directly responsible.

Q. There was an Air Adviser assigned to the unit for which you worked, was there not? A. That is correct.

Q. What was his name? A. Major Milton D. Britton.

Q. Were you, in May of 1958, under—did you take  
133 any orders from him? A. On the day of May 20, 1958, or the month of May?

Q. Well, in the month of May, 1958? A. I very possibly could have, I don't recall any specific orders.

Q. Well, how long did he serve as Air Adviser? A. He is still there.

Q. Does he customarily give you orders of any kind? A. He wouldn't normally give me orders in line of duty as an aircraft maintenance chief; however, there might be occasions, for instance, if he was leading a flight and I was a wingman, he might have given me orders on those occasions.

Q. You mean if you were the pilot of a plane in a flight which he commanded, then he would give you orders? A. That is correct.

Q. Well, then, he would never give you orders in your capacity as an air technician? A. He could have, he could give orders if he saw an unsafe practice or mishandling of Government property, he is a major and he outranks me, he could give me orders.

Q. Did he in fact ever issue any such orders to you? A. I don't recall that he did issue any such orders.

Q. Well, you are familiar with the term "Command Authority" as it is used in the military sense, I take it, 134 Captain? A. Yes.

Q. Did he have command authority over you, in general? A. No.

Q. Now, as a captain assigned to this unit of the Maryland Air National Guard, you were obliged to attend certain training periods? A. That is right.

Q. How many training periods did you attend per year? A. Twenty-four weekend training periods which—actually, there are 48 training periods since each of these 24 days constitutes two training days, and it is 15 days of field training in the summer and then I might accomplish, when I was flying, 36 additional training periods called flying training periods.

Q. Does this refer to the period of time up to and including May 20, 1958? A. That is correct, these are per annum.

Q. That is the period of time which I am referring to in these questions concerning your training periods. Now, was there a training schedule or program which was followed by you and others who participated in this training? A. Yes.

Q. Who issued this training schedule or program? A. The numbered Air Force that might gain this unit in 135 the event of mobilization.

Q. Well, specifically, who put out the training schedule which was followed? A. The United States Air Force.

Q. You mean the Headquarters of the United States Air Force in Washington? A. Probably the overall training program probably came out of Headquarters.

Q. Well, who conducted the actual training? A. The members of the 104th Fighter Squadron.

Q. Well, who were the members of the 104th Fighter Squadron who conducted the training in this manner? A. It could be any one of a number of people. I might also add the training could be conducted by Air Adviser officers, conducted by Air Force personnel that have mobile training teams; in existence right now at our base, we have a school going on, conducted by the Air Force, upgrading training could be conducted at an Air Force school at an Air Force Base, which was common at the time.

Q. Well, what is your authority for that statement which you just made? Can you refer me to any regulation which so provides? A. I am not familiar with the regulations by memory, no.

Q. Was any such training conducted by an Air 136 Force Adviser or the other parties you enumerated, at your unit? A. Yes.

Q. On what occasions? A. On a required basis.

Q. Well, specifically, when? A. I don't recall the exact dates. Sgt. Baldwin might conduct classes for aircraft mechanics to help them move to a higher skill level, they conducted testing on the Air Force upgrading tests.

Q. Who are these people that you are referring to, are they members of the Air Adviser's staff? A. Yes, sir.

Q. How often did they conduct this training that you say— A. It is rather a hard question to answer, as needed, let me put it that way, if we asked them to conduct training, they would conduct training for us.

Q. Once a year, once a month, once a week, how would you care to define it? A. This would vary, I can't answer the question that precisely.

Q. I am not asking you to answer precisely, I am asking you to tell me in general. A. More than once a year.

137 Q. Would that be twice a year? A. It could be.

Q. More than twice a year? A. It very well could be.

Q. How much more than twice a year? A. I don't recall, Mr. Pettibone.

Q. Did you attend these training periods? A. I probably established them or established the requirement, myself.

Q. Does that mean you attended them, yourself? A. I probably set up the requirement for them, I probably contacted the Air Adviser's office and asked that its men conduct the training.

Q. I am asking did you attend them yourself, personally? A. Not necessarily, no.

Q. Well, then, if you didn't attend them personally, do you know who conducted the training? A. Yes.

Q. How do you know, if you weren't there? A. Because I am the man, probably, that set the whole program up, Mr. Pettibone. I didn't necessarily attend the training.

Q. Captain McCoy, let me refer you to certain questions and answers which were the questions given to you at the time your deposition was taken, and your answers thereto.

This is at page 83 of your deposition:

138 "Question. And who would conduct the training assemblies?

"Answer. The training program is established by the United States Air Force, conducted internally.



"Question. And how were they also put on the program?"

"Answer. The actual training was conducted internally within the unit.

"Question. By whom?"

"Answer. By the people in the 104th Fighter Squadron.

"Question. And who were the people in the 104th Fighter Squadron who conducted them?"

"Answer. The members of the unit themselves, the various supervisors within the unit.

"Question. Can you name any of them?"

"Answer. It might have been anyone. The members of the unit have to be specialists in a particular field.

"Question. You might have conducted some of them, and did conduct some of them?"

"Answer. That is correct."

139 Were the answers that you gave at that time to those questions—are they still correct? A. That is correct.

Q. Now, you have testified, I believe, that you sometimes performed functional check flights, this is prior to May 20, 1958, that I am referring to? A. That is correct.

Q. What is a functional check flight as you have used that term? A. A functional check flight is defined in Technical Order 1-1-300 as a flight—this is a generalization I am giving now—a flight to determine air worthiness of an aircraft after certain inspections and certain maintenance—and/or certain maintenance that has to be performed.

Q. Any particular kind of maintenance? A. One, specifically, would be a periodic inspection.

Q. Any other kind of maintenance involved? A. Yes, the removal and replacement of a flight control, movable flight control.

Q. You referred to Technical Order 1-1-300. What is the general nature of that Technical Order, what is the purpose of it, perhaps I should say? A. As I have indicated, this deals primarily with the laying down of the criteria for the requirement of functional checks on aircraft or equipment after maintenance and inspection.

Q. Have you actually performed these functional check flights yourself—had you performed them prior to May 20, 1958? A. I have, yes, sir.

Q. Are you authorized to carry passengers on such flights? A. Technical Order reads minimum crew.

Q. What would be the minimum crew for a T-33A? A. Two people.

Q. What type of airplane were you flying at the time of this accident? A. T-33A.

Q. And how many people would it take to perform a check flight on a T-33, that is to say, a functional check flight of the type we have been discussing? A. To properly perform a functional check flight, it would require two people because of certain instruments and certain indications in both seats that you would have to observe to make comparisons, for instance, the air speed indications, altitude, and so forth.

Q. Would either one or both of the pilots have to have any special qualifications? A. They would have to have certain qualifications, yes.

Q. First of all, they would both have to be rated pilots, would they not? In other words, they would have to have flying status, would they not? A. I am not too certain of that, I think this would be desirable but I am not too certain that both of them would have to be pilots.

Q. They would both have to be pilots? A. I am not too certain that they would have to be pilots.

Q. Well, in any event, they would both have to have certain special knowledge, is that correct? A. That is right.

Q. What kind of special knowledge? A. They would have to have had experience at least and schooling, in that they would have to know what indications they should expect.

Q. Is it mandatory that there be two such persons, two such pilots to perform—two such persons to perform a functional check flight, or can it be performed by one person alone? A. I believe the Technical Order says minimum crew in all cases, this to me indicates it is a local interpretation, the maintenance officer of the particular unit would have to determine what he considers minimum crew. I would say that two people is a minimum crew in a T-33A.

Q. There was a passenger accompanying you on the flight which you made on May 20, 1958, was there not? A. That is correct.

142 Q. His name was Chalmers? A. Right.

Q. Did he have any previous flying experience? A. To my knowledge, he had none.

Q. Was he experienced in things which a person should know to perform a functional check flight as you just described? A. To my knowledge, he was not experienced, no.

Q. Now, when a functional check flight is performed, are there any rules or regulations which require that it be performed in a specific area, that is to say, a functional check flight to be performed by the 104th Fighter Interceptor Squadron to which you were assigned at that time? A. I believe there is a local SOP that requires that the functional check flights be performed in an area that is defined by the local Commander.

MR. PETTIBONE: I would like to request that this document be marked Defendant's Exhibit No. 3 for identification.

THE CLERK: Defendant's Exhibit No. 3 for identification.

(Standing Operating Procedure No. 3, dated 2 January 1957, was marked Defendant's Exhibit No. 3 for identification.)

143

By MR. PETTIBONE:

Q. Captain McCoy, I hand you a document which has been marked Defendant's Exhibit 3 for identification. Would you look at it and tell us what it is, if you know?

A. This is a reproduction, apparently, of a Standing Operating Procedure.

THE COURT: Keep your voice up, please.

THE WITNESS: Yes, ma'am. This is a reproduction, apparently, of a Standing Operating Procedure issued by the Operations Officer of the 104th Fighter Squadron, defining certain local flying areas; however, it is not signed by the Operations Officer, not by ours, anyway.

By MR. PETTIBONE:

Q. Well, was this Standing Operating Procedure in effect in your unit, the 104th Fighter Interceptor Squadron on May 20, 1958? A. I didn't read the detail, but it appears to be one in effect at that time.

Q. Please read it in detail and let us know if that was in effect, to the best of your recollection, on May 20, 1958. A. Near as I can recall, this appears to be the one that was in effect.

MR. PETTIBONE: The defendant offers in evidence the document which has just been identified by the witness, Defendant's Exhibit No. 3, I believe.

THE COURT: Admitted.

(Defendant's Exhibit No. 3 was received in evidence.)

THE COURT: At this time, we will recess until 1:45 p.m.

(Whereupon, at 12:30 the luncheon recess was taken pursuant to reconvening at 1:45 p.m., of the same day.)

145

## AFTERNOON SESSION

(The proceedings resumed at 1:45 p.m.)

THE COURT: Go ahead, Mr. Pettibone.

Thereupon,

**Captain Julius R. McCoy**

resumed the stand and testified further as follows:

**CROSS-EXAMINATION—(Resumed).**

**By MR. PETTIBONE:**

Q. Captain McCoy, referring to Defendant's Exhibit No. 3, is the term "Engineering Test Flights" as used in paragraph 5 thereof, the same term that you employed in an answer to one of my questions in which you referred to a functional check flight? Are these terms synonymous, in other words? A. They are, sir.

Q. And were you performing such a flight, that is to say, a functional check flight or engineering test flight on May 20, 1958, when this accident happened? A. I was not.

Q. As a matter of fact, a functional check flight or engineering test flight would have to be made in a specified area, would it not? A. That is correct.

Q. Actually, the flight which you performed on May 20, 1958, during the course of which the accident occurred, was in a different area from that, was it not? A. It was within the confines of the local area, there may have been an overlap.

Q. There may have been some overlap but it exceeded the confines of the test flight area? A. That is correct.

Q. Incidentally, what is meant by the term local flight area or a local flying area? A. This is an area that is defined by the Commander with certain limitations; in such area you can conduct a flight with an Air Force Form 113 Local Flight Clearance, no authority from Flight Service or now FAA is required in VFR weather.



Q. Was the flight you performed on May 20, 1958; confined within that local flying area? A. It was.

Q. When did you first make plans for the flight which you made on May 20, 1958? A. It was on Saturday prior to this particular day.

Q. And the flight itself was on a Tuesday, is that correct? A. That is correct.

Q. And did you discuss the plans for your flight with anyone on Saturday preceding? A. Col. Kilkowski.

147 Q. And did you tell him that you wished to make a flight on Tuesday, May 20th? A. It was tentative that I would make a flight Tuesday, May 20th, yes.

Q. And what reason did you give for wishing to make this flight on that date? A. The purpose of the flight was a proficiency flight; however, in this particular case, since I had hoped to take a passenger, I got direct approval from Col. Kilkowski.

Q. Who was the passenger that you intended to take? A. Donald Chalmers.

Q. Did Col. Kilkowski ask you your reason for wishing to take Donald Chalmers on this flight? A. He probably did; when I expressed a desire to take the passenger, I probably discussed it with him.

Q. Now, on the day of the flight itself, did you obtain a flight clearance? A. I filed an Air Force Form 113 in the operations office at the 104th Fighter Squadron.

Q. Yes, that is already in evidence, I believe, as Plaintiff's Exhibit No. 1. Let me show you Plaintiff's Exhibit No. 1. Is that the flight clearance which you just referred to? A. This is a reproduction of that clearance, yes.

Q. Now, starting near the top of this, first of all, 148 at the top it says "Local Flight Clearance," then near the top on the lefthand side, someone has written "T-33." What does that stand for? A. That is in the block titled "Type Aircraft" and it represents the type of aircraft that made the flight.

Q. Incidentally, who filled out this form, did you fill it

out? A. With the exception of the actual departure time, all the entries on the form are mine.

Q. In your handwriting? A. Yes.

Q. All right. Now, the next thing after T-33, I see a number, 35966. What does that mean? A. That is the last five digits of the aircraft serial number.

Q. The actual aircraft which you flew on this flight, is that it? A. That is correct.

Q. All right. In the next block to the right, where it says "Mission," you have written the letter or numeral "O." What does that stand for? A. That is the Mission type symbol.

Q. What does that stand for? A. That would be a proficiency or operational mission, as opposed to "X-3" for functional check flight, "A" for administrative flights, et cetera.

Q. All right. Now, on the next line below, there appears in the first block the letter "P". That is followed by your name. What does the letter "P" stand for? A. It is a symbol for pilot, duty symbol for pilot.

Q. That is followed by an abbreviation for captain, that would refer to your rank, would it? A. That is correct.

Q. The next would be your serial number, AO and the rest of those numbers? A. That is correct.

Q. What does this mean where it says "Home Station," something written there? A. MTP, that is the designator for the Martin Airport.

Q. All right. Now, on the next line following this, I see the letter "X" which you have written under "P." What does that stand for? A. That is a non-crew member status.

Q. And you have written his name, Chalmers, D. A., after that? A. That is correct.

Q. And of course, that is "PFC," what does that refer to? A. That is his rank.

Q. What is the number that follows that? A. That is his serial number.

Q. That would be his serial number in the Army National Guard? A. That is correct.

Q. All right. And where you have written Pikesville, Maryland, that is his residence address? A. That is the Armory that he is attached to.

Q. All right, fine. Now, near the middle, I see the number which appears to be 1000. Could you explain what that is? A. That is the military way of expressing the time of day. That would be 10 o'clock in the morning.

Q. Ten o'clock standard time or were you on daylight time? A. We were on daylight time, but I believe this is written standard time.

Q. That refers to 10 o'clock standard time? A. That is correct.

Q. Was that the time of day when you intended to commence this flight? A. That is correct.

Q. What time of day did you fill out this form, would you say? A. This is approximately 30 minutes before the flight.

Q. That would have been— A. Thirty to forty 151 minutes.

Q. Roughly 9:30 a.m., standard time, on the morning of the flight? A. That is correct.

Q. All right. Now, the next numbers which you have written in there, will you identify them, just read that column across and tell us what all those different marks on there mean, which you have made? A. The first block "ETD" estimated time of departure, 1000 hours. The next block is "ETA," that is estimated time of arrival and this has been changed or was changed probably at that time to mean ETE, or estimated time en route, so the symbol is 1 plus 00, meaning the number of hours the aircraft would be airborne. The next block is hours of fuel, numbers 1 plus 30, an hour and a half of fuel.

Q. Does that mean you had enough fuel on the plane to cover a flight an hour and a half in duration? A. Yes.

Q. Continue. A. The next block is "Auxiliary Base of 1st Intended Landing," this would not apply since the

aircraft was not intending to land at an auxiliary base. The next block is "Form 'I' Filed At," this has the symbols "NR," meaning not required. And the next block is "Date Filed," referring to the Form F, this also is not required. The next block that I filled in is "Clear-  
 152      ance Authority," it has my name, and the next block over has "Pilot's Signature," that is my name again. The next block is—

Q. Excuse me, you mean that is your signature? A. My signature, yes.

Q. All right. A. The next block is "Actual Departure," meaning the time and this has a number of 1007, meaning seven minutes after ten in the morning.

Q. You say you did not write that down on there yourself. A. I did not, no.

Q. Who would write that on there, at least if not by name, how would that be done? A. This would be done by one of the operations clerks; after the aircraft had physically left the airfield, he would note the departure time.

Q. He would watch your take-off and check the time and enter it? A. He would probably get the information from the tower through a phone.

Q. I see. Did you have authority to execute your own— approve your own clearance, your own flight clearance? A. I did, yes.

Q. How did you come to have that authority, what  
 153      was the procedure which gave you that authority?

A. I was one of the pilot officers that had the additional duty of being an operations officer during non-workday flying hours; consequently, the Commander designated me as a clearing authority because I had to brief other pilots and clear their flights.

Q. Were there other officers besides yourself who were authorized to execute clearances, including their own flight clearances? A. There were.

Q. About how many were so authorized; if you remember? A. All officers that had the rating of senior pilot were authorized by virtue of having that rating. I am not aware

just exactly what the number was and I don't know how many other people were in my category that the Commander had authorized.

Q. Did you actually have any discussion with Col. Kilowski that morning before you took off on this particular flight? A. I did, yes.

Q. About what time was that? A. I would imagine about 9 o'clock in the morning.

Q. That would be 9 o'clock standard time? A. That would be daylight saving time.

Q. That would be about two hours before you actually took off, then, roughly? A. Let me get the time straight.

Q. Well, the form shows, I believe, that you took off at 1007 standard, that would be 1107 daylight time, would it not? A. That is correct.

Q. And if you had this conversation around 9 o'clock with Col. Kilowski, that would be about two hours before you took off? A. That sounds about right.

Q. Is that right? A. Well—

Q. Just what did you discuss with him on that occasion? A. I reassured myself that I had the clearance to take the passenger on the flight, by contacting him again.

Q. Let me now show you Plaintiff's Exhibit No. 2. Now, in the first line of the text, this is Flight Order No. 105, and in the first line of the text there are some abbreviations. Can you translate those abbreviations into English for us? I take it those are military symbols and military abbreviations which have some particular military meaning. Would you tell us what they are? A. The following crew members, I think this is, this Headquarters.

Q. The CR/M stands for crew members, all right. 155 A. This Headquarters will proceed.

Q. That is WP? A. That is correct, on-slash-about 20 May 1958 in aircraft as indicated below from Martin Airport, Baltimore, Maryland, to destination specified below.



Q. Now, we have the letters "CIPAP," what do they stand for? A. I don't really know.

Q. All right, continue on. A. For purpose of maintaining flying proficiency and upon completion of flight, will return to proper duty station on-slash-about 20 May 1958.

Q. All right. Now, what is this A/C type, does that refer to the type of aircraft? A. Aircraft type and number.

Q. It indicates T-33A, is that right? A. That is correct.

Q. With the number of it, and then follows Captain and your name, J. R. McCoy, is that right? A. Yes.

Q. And your serial number? A. That is right.

Q. Now, Destination Local, what does that mean? A. That means that the flight will be conducted on a local flight clearance and will return to the home station of the 156 aircraft.

Q. That would be Martin Airport? A. That is correct.

Q. And then the next block provides "Duty," and it has the symbol "P," what does that stand for? A. Pilot.

Q. Now, there is another line filled out on this order relating to—this is another flight? A. Another flight, another aircraft.

Q. Nothing to do with you or your flight in this aircraft? A. None at all.

Q. Is it customary to put two or more flights on the same order, is this the usual procedure to do this? A. I believe so, they have several lines.

Q. Down at the bottom here, it says "By Order of the Commander." Who would the Commander be? A. That would be the squadron Commander.

Q. Would that be Col. Kilkowski in this case? A. That would be, yes.

Q. And then follows the word "Official," and it appears to be signed by Joseph J. Maisch, Jr., Major, Maryland Air National Guard, Operations Officer. Was he the operations officer on that day? A. I assume he was.

157 Q. I see. Are there regulations that require that you brief a passenger before he can accompany you

on a flight of the nature you made on May 20, 1958? A. I am not too sure of the regulations; however, it is a local policy and in this case was accomplished.

Q. I see. Did you brief your passenger, then, in accordance with that local policy? A. Yes, I did.

Q. About how long did that take? A. There are two portions to the briefing, one was in the use of equipment such as parachutes and survival or escape procedures from the aircraft, ejection procedures, and the other was general briefing on the aircraft and at the aircraft on various items within the aircraft and the two, totally, took about 40 minutes.

Q. What was your purpose for taking this passenger with you on that date? A. As I have previously stated, I had known him for some time and I had talked to him on some occasions, he had expressed an interest in the Air National Guard and the space was available, regulations were complied with, I felt that he might be interested in joining the unit and possibly with the thought of going to flying school.

Q. Now, the flight which you made on May 20, 1958, was in a T-33A type airplane, is that correct? A. That 158 is correct.

Q. And the number of the plane was 53-5966, do you remember, is that correct? A. That is correct.

Q. And when did you select that particular airplane for this flight? A. The morning of the flight.

Q. How long before the flight? A. Some time in the morning, possibly around 9 o'clock or shortly before.

Q. Why did you select that particular airplane? A. Well, we had two T-33's and the other one was scheduled to go on a flight on the same morning.

Q. So, by elimination, you took the one that was left? A. Probably by mutual agreement with the pilot of the other aircraft.

Q. Did you inspect the plane which you used, before you took off in it? A. I did, yes.

Q. I believe the term is "check it," is that right? A. That is referred to as a walk around inspection.

Q. A walk around inspection, what does that involve? A. That involves making a visual inspection of the aircraft, check for worn tires, fluid leaks, proper air pressures, certain ground safety pins removed, panels are secure, 159 things like ball cap being secured.

Q. Did you make that inspection of this plane? A. I did, yes.

Q. Did you find anything wrong with the plane? A. I did not.

Q. Was it in good condition, the best of your knowledge? A. Visual inspection showed the plane to be in good condition.

Q. Before you actually took off, did you warm up the plane and try the motors and that sort of thing? A. Yes, there is a regular procedure.

Q. There is a regular procedure, did you follow the regular procedure? A. Yes.

Q. Did the plane function properly? A. It did.

Q. Did there appear to be anything wrong with it, defects in it, or any mechanical malfunctions of any kind? A. No, sir, there did not.

Q. After you took off in that plane on May 20, 1958, did you at any time during the course of your flight, up to the time of the collision, of course, notice any malfunctions or defects of any kind in the plane? A. I did not.

Q. Did it perform properly in every proper way? 160 A. Yes, sir.

Q. Had you flown this particular plane before? A. Yes, I had.

Q. Do you remember when was the last time you had flown it before May 20, 1958? A. I don't recall exactly, I had flown another T-33 a few days just prior to the accident.

Q. Do you remember whether there were any markings or symbols marked on the plane when you flew on May 20, 1958? A. Whether there were any symbols or markings?

Q. Yes. A. Of course, the aircraft number was on it, certain other instructions such as electrical power connection points, engine access doors, that sort of stenciling was on the aircraft, and the letters, either MIDANG or MDAFNG, it was just during a period when we were changing the markings from one symbol to another.

MR. PETTIBONE: May I ask that this be marked?

THE CLERK: Defendant's Exhibit No. 4.

MR. PETTIBONE: Defendant's Exhibit No. 4 for identification.

(Standing Operating Procedure No. 9, dated 16 January 1957, was marked Defendant's Exhibit No. 4 for identification.)

161 By MR. PETTIBONE:

Q. Captain McCoy, I hand you Defendant's Exhibit No. 4 for identification and ask you to state what it is, if you know? A. This appears to be a reproduction of the Standing Operating Procedure issued by the operations officer, 104th Fighter Interceptor Squadron; however, it doesn't bear his signature. Apparently, it was in effect on May 20, 1958.

MR. PETTIBONE: Thank you. I wish to offer in evidence the document which has just been identified by the witness.

THE COURT: Admitted.

(Defendant's Exhibit No. 4 was received in evidence.)

MR. PETTIBONE: I would like to have this document marked for identification.

THE CLERK: Defendant's Exhibit No. 5 for identification.

(Standing Operating Procedure No. 18, dated 25 January 1957, was marked Defendant's Exhibit No. 5 for identification.)

By MR. PETTIBONE:

Q. Captain McCoy, I hand you a document which has been marked Defendant's Exhibit No. 5 for identification.

162 Will you look at it and tell us what it is, if you know?

A. This appears to be a Standing Operating Procedure, a reproduction of a Standing Operating Procedure from the office of operations officer, 104th Fighter Interceptor Squadron.

Q. Do you know whether it was in effect or not on May 20, 1958? A. I would believe it was, yes.

MR. PETTIBONE: The Court please, I wish to offer in evidence the document which has just been identified by the witness.

THE COURT: Admitted.

(Defendant's Exhibit No. 5 was received in evidence.)

By MR. PETTIBONE:

Q. Captain McCoy, let me refer to some questions and answers which you made at the time your deposition was taken. At page 477, you were asked the following questions:

"Question. During proficiency flight as a maintenance chief would you automatically note its function and check its efficiency insofar as the performance of the aircraft is concerned?

163 "Answer. I would not be on a flight in duty as a maintenance chief. I would be on the flight in my duty as a captain in the Air National Guard on flying status and qualified to check aircraft.

However, I may be holding the job description as an air technician, as an aircraft maintenance chief simultaneously.

"Question. So that automatically you would do both, wouldn't you?

"Answer. I don't quite like the word 'automatically'.

"Question. Well, normally. In other words, when you are in the airplane you are really functioning in both capacities?



"Answer. It is my belief that as an air technician when I get in an airplane I become a Captain in the Air National Guard, or I am a Captain in the Air National Guard qualified by the Department of the Air Force and its regulations to operate the aircraft, but I still have the responsibility as an aircraft maintenance chief to evaluate the condition of the aircraft."

Were the answers which you gave to those questions true, do you affirm those answers to those questions here?  
A. The best of my belief, yes.

Q. Now, did you continue to have a rating as a flying officer after May 20, 1958, up to the present time? A. I retain a rating at this moment, Mr. Pettibone.

164 Q. Have you performed any aerial flights since May 20, 1958? A. I have not.

Q. Well, in order to maintain the rating, aren't you required to make a certain number of proficiency flights?  
A. No, sir.

Q. Well, have you been on flying status since May 20, 1958? A. I have not.

Q. When did you go off flying status? A. Well, originally I went off flying status immediately after the accident due to injuries.

Q. Pardon? A. Due to injuries, I was initially taken off flying status for being physically incapable of flying, then I requested suspension from flying status at some later date, I don't recall the exact date.

Q. Approximately how long after the accident did you request that you be relieved of flying status? A. I think it was probably about six months after the accident.

Q. And have you been off flying status, then, at all times since then to the present moment? A. I have, yes.

Q. Are you still employed as aircraft maintenance chief? A. I am, yes.

165 Q. Have you held that position since the date of the accident on May 20, 1958? A. Yes, sir.

MR. PETTIBONE: May I ask the Court's indulgence for one minute?

THE COURT: Certainly.

By MR. PETTIBONE:

Q. How long a flight did you plan to make on May 20, 1958? A. One hour.

Q. And approximately where did you intend to go on that flight? A. I intended to follow the route of the flight up to and until the time of the accident; had there been no accident, I would have proceeded back to Baltimore.

Q. Were you on your way back to Martin Airport at the time the accident occurred? A. Yes.

Q. And how far out had you gone from Martin Airport before you turned back? A. The furthest point?

Q. Yes. A. Harper's Ferry, West Virginia.

Q. Now, what activity did you engage in during 166 the course of this flight from the time you took off until the time the accident occurred, what were you doing? A. By activity, I can't quite follow you. I was engaged in flying the aircraft, for one thing.

Q. You had a passenger with you, were you talking to him? A. Yes, from time to time.

Q. And what was he doing? A. I don't know, you can't see the passenger in the rear seat from the front seat.

Q. Do you know whether or not he had a camera with him? A. He had a camera with him, yes.

Q. Do you know whether or not he took any pictures? A. I have no idea.

Q. Did you have any conversation with him during the flight? A. Yes.

Q. What was the conversation about? A. I pointed out various landmarks to him.

Q. Such as? A. Well, one, Friendship Airport, City of Washington, Leesburg, Virginia, the Potomac River, the Chesapeake Bay, Harper's Ferry, general conversation.

Q. Did you notice whether or not he used the camera at

any time? A. I couldn't tell, I don't know for sure,  
167 because you can't see the passenger.

Q. Did you watch the instruments on the plane?  
A. From time to time, yes.

Q. Did the instruments indicate that the plane was behaving properly, performing satisfactorily and without mechanical troubles or difficulties of any kind? A. They did.

MR. PETTIBONE: No more questions, Your Honor.

REDIRECT EXAMINATION.

By MR. GALIHER:

Q. Did you check during the course of the flight the efficiency of the equipment in order to determine if it was working properly, the plane was flying properly? A. Yes, all the equipment on the aircraft that I had reason to check, functioned properly.

Q. During the average week, how many men were there at the base on the weekdays flying the planes, Captain? A. We had six or seven flying officers full time and then we might have in the evenings possibly 10 or 12 part-time pilots; when I say part time, they had some full-time job other than with the Air National Guard, and then we might have one, two, or three of these so-called part-time people during the day, during the week.

Q. Did you get any extra flight pay for this particular flight? A. I think I can answer that by saying  
168 there is no way to know what portion of the flying time is the part that qualifies you for flight pay, there is a certain minimum amount established and all over that would contribute or might not contribute.

Q. Well, you had, up to the day of the accident, more than the needed flight time for that particular period, did you not? A. Yes.

Q. Did you do the principal flying to check maintenance of the planes at that base? A. I probably flew far more functional check flights than anybody else on the base, yes.

Q. Did you have the authority to issue the flight clearance you have spoken of? A. Yes.

Q. You have previously testified on page 120 as follows:

"Question. And that was the purpose of the particular flight at the time of this unfortunate accident?

169 "Answer: I made numerous flights with the idea in mind to increase my proficiency and to analyze the the quality of the product. This particular flight—

"Question. You include that?

"Answer. This particular flight was a part of my function to maintain proficiency and maintain the equipment."

Did you so testify? A. I believe I did.

Q. And is that correct? A. Yes.

MR. GALIHER: Thank you very much, Captain.

MR. PETTIBONE: No further questions by the defendant, Your Honor.

THE COURT: You may step down.

MR. GALIHER: Thank you very much, Captain McCoy.

(Witness excused.)

MR. PETTIBONE: Before the next witness, I would like to make a request. During the course of his testimony, Captain McCoy testified to certain records, apparently his personal records which he brought with him. We would like the opportunity of examining those records which we have not, so far as we know, seen heretofore. We also would like the privilege of recalling him at some later time in this trial, if necessary, by virtue of anything we find in those records.

THE COURT: Captain, do you have the records with you?

170 CAPTAIN MCCOY: Yes, I do.

THE COURT: Would you like to give them to the Clerk here and let her give you a receipt for them.

(The records were given to the Clerk.)

Thereupon,

**Lieutenant Colonel Victor F. Kilkowski**

called as a witness by the plaintiff, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION.**

**By MR. GALIHER:**

Q. Colonel, what is your full name, address and occupation? A. Lt. Col. Victor F. Kilkowski, 1611 Ingram Road, Baltimore 12, Maryland.

Q. What is your occupation at the present time? A. At present, employed as Base Detachment Commander of all units of the Maryland Air National Guard based at Martin Airport.

Q. Now, do you have both a military and a civilian status? A. I have at the present time both a military and a civilian status.

Q. Did you in May of 1958, specifically May 20, 1958? A. Yes, I did on May 20, 1958.

Q. And what was your military status at that time? A. I was Commander of the 104th Fighter Interceptor Squadron and Base Detachment Commander of Martin Airport at the present time.

**THE COURT:** What was the first?

**THE WITNESS:** Commander of the 104th Fighter Interceptor Squadron of the Maryland Air National Guard.

**THE COURT:** Thank you.

**By MR. GALIHER:**

Q. And you told us that also you had a status of Base Detachment Commander? A. Base Detachment Commander, Martin Airport.

Q. Was that a civilian status? A. That was as an air technician.

Q. Now, I have here Plaintiff's Exhibit No. 3, Air National Guard Manual, captioned "Civilian Personnel



Manual." I would like to refer you to page 23 and ask you to look at it and tell me if that was the job description of your civilian job as air technician in the month of May, and specifically May 20, 1958? A. Yes, it is.

MR. GALIHER: Your Honor, you have seen the other two job descriptions of the maintenance supervisor and the aircraft maintenance chief. May I hand this up to Your Honor? I would like to introduce this into evidence.

THE COURT: Well, now, this that you are offering  
172 consists of three pages, does it not, 23, 24 and 25?

MR. GALIHER: Yes, ma'am.

THE COURT: All right, admitted.

(Pages 23, 24 and 25 of Plaintiff's Exhibit No. 3, were received in evidence.)

MR. GALIHER: May I confer with counsel for a minute?

THE COURT: Yes, you may.

By MR. GALIHER:

Q. As Base Detachment Commander, Col. Kilkowski, will you tell us what personnel was under your command or control? A. Are you speaking of it at the time of the accident?

Q. Yes, sir. A. We had approximately 120 employees at the base, in various areas, supply, maintenance, administration and personnel, operations, fiscal, and—

Q. Were these civilians that you are now talking about? A. They are all air technicians.

Q. Air technicians? A. Yes, broken down into officer, Air category, type position, generally the head supervisors are officer type except for certain sections.

Q. What were the duties of these persons that you  
173 have just referred to? A. Our duty was to provide the continuity during the week of plans and programs of the units, basically we were chiefly responsible for doing all those things that the units could not do in their military status, such as maintain the aircraft; the units met for four periods a month, naturally they could

not maintain the aircraft nor could they maintain all the records associated with the military, so our position at the base was to continue this in accordance with the regulations, providing administrative and maintenance services.

Q. Were some of these persons clerks? A. Some of them were clerks, yes.

Q. Some of them had the duty and obligation of watching over and taking care of the aircraft at the base? A. Not watching over as such, but caring for the maintenance, making sure that they were in commission, maintained properly, inspected.

Q. Was there a document issued by the National Guard, Department of the Air Force, with respect to the civilian personnel that you have just described at the base? A. Yes, there is a numbered document that comes from the National Guard Bureau to the State, which authorizes positions by grade, position named; they conform to the titles and general description of the positions in the Manual that you have just shown me. When we receive this  
174 document, the State then is authorized to hire against this manning document with the grades that have been authorized, and would, according to pay scales that have been set by the Government.

Q. Do you mean the United States Government? A. The United States Government sets the maximums that can be paid for NGC or Wage Labor Board employees. We go by the rules of the Air Force, Army Wage Labor Board rules for the NGW employees, as they are called now; I think they were referred to as NGM's at the time of the accident.

Q. When you refer to Air Force, do you mean United States Air Force? A. Yes.

Q. Did the appropriation or funds for your unit have any particular number at your base in May of 1958? A. The appropriations for our base contained various number designations, all money that is allocated to the base is allocated by project number to the State through the

United States Property and Fiscal Officer. The pay for air technicians falls under project 448 fund.

Q. Who was the United States Property and Fiscal Officer for the State of Maryland in May of 1958? A. Lt. Col. Irvin E. Ebaugh.

Q. And did you indicate, a minute or so ago, that all moneys that came to the personnel at your base, 175 civilian personnel, came through his hands? A. The United States Property and Fiscal Officer receives the budget authority and allocation from the National Guard Bureau. This is suballocated to the base, to the assistant USP&FO, who is located at the base, and through this method the funds are certified.

Q. Did you also have a military status in May of 1958, as distinguished from a civilian status, Colonel? A. Yes, as I said, I was Commander of the 104th Fighter Interceptor Squadron.

Q. What was your rank in May of 1958? A. I can't remember whether it was Major or Lieutenant Colonel, right at the present time, I think it was Major.

Q. How is your salary paid in both your civilian and military status? A. Salaries were paid in two different manners, in the civilian status, we certified to the time and attendance of the employees, the checks are made out or the payroll was made out based on the wage scale of each employee. And this is sent to Bolling Air Force Base, which has the obligation of providing financial service for our base; the checks are made out to the individuals and returned to the base and we distribute them.

Q. Was Bolling Air Field a United States Air 176 Force Base? A. Yes.

Q. Pardon me? A. You asked two questions, the second on the military line. People attended the various scheduled training assemblies and were marked, in accordance with their status, present or whatever the case may be, or absent, this status then is checked by the Air Force Adviser, it is one of his duties, the payroll is made up and sent to, I think at that time it was Clinton County

Air Force Base in Ohio, and the check would be issued on a quarterly basis and returned to the Commander of the unit for distribution to the members of his unit.

Q. The civilian air technicians, as I understand, would be paid by United States Treasury Department check issued from Bolling Field Air Force Base? A. Both the checks are drawn on the United States Treasury.

Q. But the checks for the civilian personnel air technicians would come from Bolling Air Force? A. Yes.

Q. Will you state whether or not you had a commission in the Air National Guard of the United States? A. I am commissioned as an officer in the Air National Guard.

Q. Now, with respect to the document that you 177 have referred to as the manning document, will you state whether or not from time to time there were changes in that document? A. Yes, the document is constantly being revised. I have been Base Detachment Commander since 1956 and it has undergone many revisions. They might change one or two positions, they might change the grade, and in some cases they have overall revisions such as we received just early in 1958.

Q. Who would make those revisions, Colonel? A. I don't know the internal process, but I think it is done by the Air Technician Section of the National Guard Bureau, which recommends these changes to the Chief National Guard Bureau.

Q. In the Pentagon? A. In the Pentagon, yes.

Q. What about the uniforms that were worn at the base, Colonel, were they the same type of uniform worn by the United States Air Force? A. Yes.

Q. And will you state if there was a regulation which prescribed that an air technician should wear a uniform?

A. Well, I could not state definitely what the regulation was at that time. I know that in the State of Maryland, we have worn the comparable military uniform since the 178 origin of the unit in 1946, and I say the matter has been a subject for discussion, I understand it is authorized now that the Adjutant General so indicates

that he wants it worn. But at the time, in fact in the entire history of the Maryland Air National Guard, we have worn the uniform at the base because of our association with transient maintenance service and other personnel on the military.

Q. What were the job and hourly requirements of the civilian employees at the base, the air technicians? A. The air technicians are scheduled for a 40-hour work week and this 40-hour work week is normally obtained Tuesday through Saturday. However, there are other periods when we have to support operations other than during this particular 40-hour period; for instance, we have to support and maintain flying operations on a Sunday and three evenings per week, Tuesday, Wednesday and Thursday, and in some occasions on Mondays, so that the work week is beyond the 40-hour work week. So we have to displace some of the schedules so that we can support this, we would displace six people to support evening flying, maybe a group of 10 or so to support Sunday flying, depending on the workload.

Q. Are you talking about persons in a civilian status or both civilian and military? A. This is civilian status only.

Q. Now, was your 104th Squadron also authorized to participate in certain training which was to be supported by Federal funds? A. All of our training schedules, inactive duty training and active duty for training, are supported by Federal funds.

Q. How many training periods were you required to pursue a year? A. There are two different categories in pursuit of training, the non-flying personnel attend 48 four-hour periods per year. In addition to that, they attend 15 days of field training per year. Now, flying personnel who are authorized by virtue of their rating, flying status, to fly, are authorized for 36 additional flying training periods in order to meet a portion of that requirement.

Q. Authorized by whom, Col. Kilkowski? A. Well, the basic authority comes from the National Guard Bureau,



and the schedules and what-not, are matters of State control.

Q. State whether or not there was an additional field training period of 15 days. A. I believe I did state there is a 15-day field training period.

Q. Will you state whether you received additional compensation for the military duties which you performed, separate and apart from your air technician duties? A.

Yes, the two pays are completely separate and distinct. 180

Q. And was the rate of pay in the military status comparable to the same rate of pay of persons who might be with the Air National Guard Bureau or with the United States Air Force? A. You participate in your military rank, you receive the pay comparable to that of your rank plus longevity increases and plus whatever other additional benefits you might qualify for, such as flying pay.

Q. Did you qualify for flight pay? A. Yes, sir.

Q. And what was the basis of compensation of the flight pay and who prescribed the basis for the amount of the payment? A. Well, the basis for the amount of the flight pay is based on the Air Force rates of pay for the comparable ranks. Now, qualification for flight pay in the case of a Reservist is so many hours for a month's period, two hours, I think it is, six hours and a quarter.

Q. Who sets those standards, Col. Kilkowski? A. I would have to check to find out exactly where the two-hour standard is set, I think it is in a Department of Defense order.

Q. In your deposition, if I may refer to it, you stated, you were asked this question:

181 "Question. And you say standard provision for flight pay. Is that found in the regulations, and if so, what regulation?

"Answer. It is found in the regulation concerning finances. The best that I can explain it is that the

pay is based, your base pay, is based on standards set by the Government. You are entitled to—

“Question. Is that the U.S. Government, the United States Government?”

“Answer. The United States Air Force.

“Question. The United States Air Force. Thank you.

“Answer. The base pay is set, and the Air National Guard are also qualified for longevity increases, and they are qualified for flight duty pay, or flight hazard pay. They are also entitled to it.”

And you go on and explain further. Does that refresh your recollection? A. It is true, I thought you asked me what the authority for it was. It is broken down into pay regulations.

Q. Perhaps my question was confusing, for which I apologize.

THE COURT: At this time, we will take a recess of 182 five minutes.

(A short recess was taken.)

MR. PETTIBONE: Might I inquire of the Court at this time, I am wondering whether I could call for the witness which I plan to present at the beginning of defendant's case. I have the witness on telephone call and he can get here on about 30 minutes' notice and I would like to know whether it is necessary that I should send for the witness at this time or not.

THE COURT: How long do you anticipate your direct examination will be of this witness, Mr. Galiher?

MR. GALIHER: I would say approximately 20 to 25 minutes.

THE COURT: How long do you anticipate that your cross-examination would be, Mr. Pettibone?

MR. PETTIBONE: I should think a similar length of time.

MR. GALIHER: We also have a deposition we want to bring to Your Honor's attention, too, anyway.

THE COURT: Well, I would say have him ready for the first thing in the morning.

MR. PETTIBONE: Thank you, Your Honor.

By MR. GALIHER:

Q. Were you also qualified for longevity increases under regulations prescribed by the National Guard Bureau? A. Yes, sir.

Q. What regulations govern the flight of a T-33 taking off under local flight clearance VFR from Martin Field? A. Many regulations but the basic flying regulation is Air Force Regulation 60-16.

Q. Can you tell us how many components the Reserve of the United States Air Force has? A. I am familiar with two basic components in the Reserve of the Air Force, namely, the Air Force Reserve and the Air National Guard of the United States.

Q. Is the latter also referred to as the Ready Reserve Component of the Air Force? A. The Air National Guard is a ready component of the United States Air Force.

Q. When you receive orders and regulations from the National Guard Bureau, can you tell us under whose authority they are issued? A. Regulations come to us from the National Guard Bureau through the State Adjutant General and to us. They bear the order signature of the Secretary of the Air Force and the heading, "Department of the Air Force."

Q. Would such orders as you have just indicated, take precedence over any local procedures that you might direct, or your superior might direct to be followed?

184 A. The Air Force and Air National Guard regulations are the basic regulations and would take precedence except where there might be orders from higher up to the contrary.

Q. There has been some testimony here, when Captain McCoy was on the stand, concerning Standing Operating Procedures, SOP's. A. Yes.

Q. What originally is the basis for the SOP's being issued? A. Well, regulations are broad in scope and cannot be made to apply to each locality, since they are general regulations which apply to all localities. So at base level and at squadron level, we put out what are known as Standing Operating Procedures which applied to our particular locality and put those regulations into force, in some cases augment them.

Q. Well, are these necessary as the result of directives that you receive from the United States Air Force? A. I couldn't be sure about that. I know that Federal inspectors insist that we have SOP's and IOP's, which are Internal Operating Procedures. I can't right now get the authority for it, right here.

Q. And when you say Federal, what department do you have reference to? A. Well, the United States Air Force has the obligation to inspect Air National Guard units at least once yearly, and the Federal inspectors come into our base and inspect our units. It is the time of the year when we find out whether we are doing things right or wrong, they tell us so.

Q. What was Captain McCoy's status at your base prior to May 16, 1958? A. Captain McCoy was employed as the base maintenance supervisor.

Q. Was that his civilian status of air technician? A. It is an air technician status.

Q. What was his military status at that time? A. He was the aircraft maintenance officer of the 104th Squadron.

Q. As of May 16, 1958, was there a change in status, civilian? A. Yes, there was a change in status and to clarify, the aircraft maintenance chief position was created early in 1958, assigned to us on a manning document.

Q. From whom? A. From the National Guard Bureau. We felt that we needed more supervision and maintenance because of the large number of people that had to be supervised and steps were taken to procure the services of Major Mitchell, who was undergoing the training instruction at

the aircraft maintenance officer course at Chanute  
186 Air Force Base. He was to return to the unit as  
the senior maintenance man. Now, May 16 is just  
a convenient time to change the manning document, change  
Captain McCoy's position. He understood fully that he  
was still to carry out the duties of the aircraft maintenance  
chief, which is a new position that has been created,  
and also act in the capacity of maintenance supervisor until  
Major Mitchell's return.

I think there has been some misunderstanding as to why  
this change occurred, but it was a new position that was  
created about that time and which gave us two officers  
in the aircraft maintenance field rather than the one.

Q. But he remained actually the only officer in the aircraft  
maintenance field? A. Until Major Mitchell's return,  
yes.

Q. What were his requirements as acting maintenance  
supervisor and aircraft maintenance chief at the base during  
the month of May, including the 16th of May and the  
20th of May? A. He had the responsibility for the general  
supervision of aircraft maintenance, the motor pool, crash  
fire rescue station, communication section; of course, he  
had qualified supervisors under him as the head of these  
sections; also the armament section. In addition to that,  
he had responsibility for flight testing aircraft, which was  
a talent that we had that we used.

187 Q. What were evaluation flights of the aircraft?

A. I don't understand the term "evaluation flights."  
There are proficiency flights, flight checks, there are flights  
which have multi-purpose purposes, such as proficiency as  
well as evaluation of the maintenance potential.

Q. Would you explain what that one entailed? A. Well,  
a flight check is designated TO—I think it is—1-1-300.

Q. Is that what is referred to in this document here—  
is that what you have in mind about flight test area? A.  
Yes, the flight test area designated for engineering test  
flights, the name of that changed somewhere back there  
from test flight to flight check. These flights that would



be confined to this area are those defined by the TO reference to flight testing of aircraft, which I say is the result of all flights, particularly by the engineering officer, a by-product of that flight is the evaluation of the maintenance of the product that he is maintaining. This is a different area than the one described here, completely.

Q. And he would then be permitted to fly around in the local flying area to do that? A. Yes, that is true.

Q. Now, did Captain McCoy's rating in the military also require him to participate in aerial flights? A. Yes, it did.

188 Q. Will you state whether or not any inspection was made of the maintenance section by the United States Air Force, of your maintenance section? A. There is an annual inspection by the United States Air Force, generally conducted by the numbered Air Force, which inspects not only the maintenance section but the entire unit, operations, personnel, supply, as well as maintenance.

Q. What about the aircraft? A. They will take an aircraft, spot check an aircraft, pull a complete maintenance check of it, to insure the standards of maintenance are being maintained. They do this during the course of their inspection.

Q. Does a maintenance person in the status of Captain McCoy, is he also required to maintain liaison with various United States Air Force Depots in connection with his aircraft? A. Yes, that is a requirement.

Q. Is he also required to train his airmen in accordance with Continental Air Command directives? A. At that time, yes, the Continental Air Command had the training responsibility for the Air National Guard; it is changed since then.

Q. But that was true of May 20, 1958, was it? A. Yes.

189 Q. Will you state whether or not the Air Force provided personnel at your base to inspect the various aircraft? A. They didn't provide personnel for the sole purpose of inspecting, they provided an Air Adviser

and two airmen in his section for the unit, one of those was assigned in the maintenance field and, as part of his duties, he did make periodic inspections of our aircraft.

Q. Was that Major Britton? A. Major Britton was the Senior Officer, Sgt. Baldwin was the maintenance airman that was assigned.

Q. Were they United States Air Force personnel? A. Yes.

Q. Can you explain to us how Federal Recognition is achieved by an officer coming into your unit? A. I couldn't explain all the details once it leaves our unit, but there are two categories, one would be an officer applying for admittance to the unit, who has a United States Air Force Reserve commission. His papers would be processed, sent to the National Guard Bureau through our State channels without the need for the Federal Recognition Board to meet locally, and we would receive notice back from the National Guard Bureau that Federal Recognition had been extended or not extended to this individual. If it were extended, we would keep him; if not, we would have 190 to get rid of him.

In the case of an officer who has no commission or an applicant who has no commission, we would have to take the gentleman in, examine him, give him tests, send off for predetermination of grade, this would be sent back to us, and the Federal Recognition papers would go forward and then he would be Federally Recognized by the National Guard Bureau under orders, notification of Federal Recognition would come from the National Guard Bureau. This is a much more involved procedure.

Q. What provisions are made for compensation for injury or death of air technicians injured or killed while in the performance of duties as air technicians? A. They are covered under the Federal Employees Compensation Act, which I understand is administered by the Department of Labor, and in case of permanent injury, they would receive benefits depending upon the amount of disability. In case of death, the survivor would receive benefits based

on status, number of children. In case of non-disabling injury, we are treated at the United States Public Health Service Hospital at Baltimore under the Federal Employees Compensation Act.

Q. What was Captain McCoy's status on the day of the accident up to and including the flight resulting in his accident?

191 MR. PETTIBONE: I object to the form of the question, it calls for a conclusion and is an issue which is before the Court.

MR. GALIHER: This is his Commander, Your Honor, and I submit he would know.

THE COURT: I will overrule the objection.

By MR. GALIHER:

Q. Would you answer that, Colonel, please, sir? A. Captain McCoy's pay status was as an air technician up to the time of the accident, he was active, present for duty. At the time of the accident, he reverts to a sick capacity, which covers both sickness and injury. In the Air National Guard, as air technicians, we accumulate sick leave, and at the time we received notice that he was injured, we changed the document or indicated on the document that he was sick as of that hour, I think it is recorded to the closest hour.

Q. Was he carried in an air technician pay status throughout that day? A. Yes, throughout his normal work period.

Q. And what were the hours of his normal work period? A. Eight to 4:30.

Q. Would the time he spent on this particular flight qualify him for the performance of flying training for the computation of time for military pay purposes? A.

192 Your question is not clear to me. You said for flying training and for military pay purposes— I am sorry.

Q. Suppose I read you the question that was asked when your deposition was taken, page 677:

“Question. Would the time he spent making this particular flight on that morning have qualified him for the performance of a flying training period for the computation of time as part thereof for military pay purposes?”

A. It is clear now. No, it would not qualify him for a flying training period at that time.

Q. Did Captain McCoy at any time after this flight request that the time of the flight be credited to his flight training period for military pay purposes? A. No, he did not.

Q. Will you state whether or not he was paid on that day for services as an air technician only? A. He was paid as an air technician.

Q. Is it true that he was likewise paid by check from Bolling Field, just as you were? A. Yes.

Q. For the civilian work. Will you state whether or not his pay as an air technician continued through the period of time he was disabled following this accident? A. Yes, it did.

Q. Was he, to the best of your knowledge, performing the duties of an air technician on that day until the time of his unfortunate accident? A. Yes.

Q. Do the air technician directives issued by the Air Force, provide that a man may continue to fly while in that status? A. The air technician directives have no bearing on the flying status of an individual. A man cannot be granted flying status by virtue of an air technician position or directive. Flying status is something separate and is issued by the United States Air Force in the form of an aeronautical rating and a flight status which is an order to participate in frequent aerial flights. The two cannot be intermingled.

Q. At the time of the accident, was there a maintenance supervisor assigned to the base other than Captain McCoy? A. Captain McCoy was the only officer maintenance

supervisor. We had other supervision in the airmen category, under Captain McCoy.

Q. Was Major Mitchell the designated maintenance supervisor at the base? A. Major Mitchell was the officer who was undergoing training at Chanute Air Force Base, who was to come back to the base to be the base maintenance supervisor.

194 Q. Was Captain McCoy instructed to perform the duties of acting maintenance supervisor during the absence of Major Mitchell? A. Yes.

Q. Did the duties of maintenance supervisor also include flying, as a desirable requirement? A. Yes.

Q. Why was it a desirable requirement? A. Desirable in order that he flight check his aircraft, that he be able to better know the aircraft for supervision of maintenance, that he be able to better understand the way his flight line people react when an aircraft is starting up, he is the pilot of the aircraft, are they doing the job properly; I think just the inherent knowledge of flying the aircraft and testing it, would make him a better supervisor.

Q. Do you use a particular form for flight order at your base, regardless of the reason for the flight? A. At the time of 1958, we had a standard form of flight order.

Q. Thank you. Was Captain McCoy under any general requirement to fly? A. Captain McCoy is an officer with an aeronautical rating and with the current flight status, had a requirement to fly to accomplish at least the minimum 60-2 minimums, keep his currency in the aircraft.

195 Q. May I give you the question I gave you when your deposition was taken:

“Question. What I am trying to get at, of course, is this. Did the duties which he was performing as base maintenance supervisor, these being the duties in addition to those which went with his job, his regular job as aircraft maintenance chief, permit or require him to make the aerial flight which he made on that date in a T-33?



"Answer. Again, the question is difficult. If a man has a flying status and is hired in the position where his flying status will enhance his chances to do a good job as an air technician, then he receives general requirement to maintain his proficiency in his capacity. In Captain McCoy's case, he had such flying status, was fulfilling a job whereby his flying status would enhance his job a bit, and therefore received a general requirement to fly."

Is that correct? A. That is correct.

MR. PETTIBONE: If the Court please, there has been a goodly number of leading questions put to this witness which I have not objected to, but I don't know why  
196 a leading question of this form should be posed to this witness at this time. He is a witness called by the plaintiff, he is not a hostile witness, certainly the plaintiff has no right to impeach his own witness and I object to the form of the question, which not only supplies the question with matters which constitute evidence and conclusions, but also supplies the answer. I object to this form of procedure with this witness.

THE COURT: I believe that your questions of this witness should not be leading.

MR. GALIHER: Yes, ma'am.

By MR. GALIHER:

Q. Suppose I repeat this question again and get the answer. Will you state whether or not the duties of base maintenance supervisor and the duties of aircraft maintenance chief permitted or required Captain McCoy to make aerial flights? A. Yes, they did.

Q. What was your reason for requiring Captain McCoy to maintain his proficiency or qualifications to fly? A. Captain McCoy has been—at that time, was required to maintain his proficiency to fly for the simple reason he had to flight test aircraft. Now, the nature of a flight test, after an aircraft has undergone quite a bit of mainte-

197 nance, means that the individual has to be competent, he cannot maintain his competency merely flying when he has to flight check the aircraft. The period between flight checks might be six months in some cases, so he has to maintain his proficiency, keep it up, in order to do that job. Now, granted there are times when it is not a direct flight check, but the proficiency that he gains from general flight qualifies him to be named as a flight check pilot, in the first place, and to sustain that rating. You are supposed to pick your most qualified people to flight check and to act as instructor pilots and you can't do this without flying.

Q. Will you state whether or not Captain McCoy requested permission from you to make the flight in question on May 20, 1958? A. Well, to clarify, each time a man flies, they do not have to walk into my office and get direct permission to fly. This is a matter of ordinary procedure, they have been granted an order to fly by virtue of their flying status and aeronautical rating, there are procedures set up there by the operations officer for them to fly, based on certain requirements, flying hour allocations, and what-not.

This particular case was brought to my attention because it involved a passenger who normally was not a crew member. Now, my interest there was to insure that that passenger was qualified in accordance with regulations to take this flight, by virtue of his Reserve association, he was listed as a qualified man to take the flight. 198 Captain McCoy indicated to me that the man was interested in joining the Air National Guard and perhaps flight training. We had, I think, two vacancies at the time and I concurred in the thing, as a matter of course, to get more people interested in the flying training school.

Q. Were there other reasons for taking this particular flight on this morning in question? A. The general reason for any flight of this nature is proficiency. You don't set up a flight for the express purpose of taking any in-

dividual up, the express purpose for flying is for your own general proficiency. If there is a seat available and the man qualifies in accordance with the regulations, it is permissible to take him up on that flight. The Air Force does it all the time.

Q. Were there other reasons for the flight in question?

A. I think as I mentioned before, a third reason for any flight is to insure that the equipment is in proper working order, to—well, as a result of each flight the maintenance officer takes, he has to fill out a form, whether the aircraft was okay, or whether it had even minor discrepancies which would be listed in the form. When he lands and comes back from the flight, this is done; so there is a third reason for the flight, which is to insure the proper maintenance of the equipment which he has general supervision over.

Q. As an aircraft technician? A. As an aircraft maintenance officer in the squadron and also as an air technician.

Q. May I ask you if there would be any other reason, such as checking the efficiency of tower personnel? A. I think I mentioned that before, Mr. Galiher, that there are many things that are associated with flying, obstructions that might be on the runway, exposed lips of runways that might cause accidents, foreign object damage, just a piece of wire on the runway or on the ramp can be pulled into an engine and ruin a \$100,000 engine.

So, this gentleman flying can see these things, he can see the cleanliness of his ramp, he can see the condition of his airport, the efficiency of the tower personnel and the way his maintenance people react, are they standing in front of the intake scoop when he parks the aircraft, are they waiting until he stops before they insert the chocks. He gets a better appreciation of the way his people are doing the job, when he flies.

Q. And that was true of the flight in question? A. It is true of all flights that Captain McCoy has taken.

Q. In and around the time of this particular flight, were other air technicians authorized to make flights for these same purposes, particularly, the latter—or the first purpose? A. Yes, we have three air technicians that are assigned to us that not only have a preferred flying status indication in their job description, but they have a mandatory flying status description, for instance, the operations officer, two flying training supervisors. Their jobs are so wrapped up in flying that if they should ever lose their flying status, they lose their jobs.

Q. Are those civilians in that capacity? A. They are air technicians, yes.

Q. Will you state whether or not the air technician, by his flights, is also expected to help bring up the proficiency of other air technicians on the base? A. We have at the base, air technicians who are responsible to lead flights, gunnery missions, bombing missions, rockets, and this air technician can lead a flight where other members of the unit are in the flight, in order to qualify them in combat readiness training.

Q. Was Captain McCoy authorized to make the flight and to fly where he did, on the occasion of May 20, 1958? A. To the best of my knowledge, Captain McCoy operated completely within the regulations and did not violate any.

MR. GALIHER: Will Your Honor excuse me for a moment?

201 THE COURT: Certainly.

MR. GALIHER: Would you mark this, if you please.

THE CLERK: Plaintiff's Exhibit 8 marked for identification.

(Release of Donald A. Chalmers, dated 20 May 1958, was marked Plaintiff's Exhibit No. 8 for identification.)

By MR. GALIHER:

Q. Do you happen to know anything about a release executed by Mr. Chalmers prior to the flight in question, Col. Kilkowski? A. Yes. By Adjutant General's order,

all persons who fly who are not designated crew members, execute that release.

Q. Is this a photostatic copy of the release in question?

A. Yes, it is.

Q. Did you see this signed by Mr. Chalmers? A. No, I don't believe I witnessed it.

No, I did not. There are three witnesses on there, I am not one of them.

MR. GALIHER: Your Honor, this was furnished to me by Mr. Pettibone.

THE COURT: Furnished to you by whom?

MR. GALIHER: Mr. Pettibone. This gentleman can't say he saw it signed, but I assume it is authentic.

MR. PETTIBONE: Well, if the Court please, it is true I furnished plaintiff's counsel with a document, but on the other hand, I don't know whether it is authentic. I don't know whether anybody can identify the signature, either. I gave it to him because he asked us to produce documents and I did, but I didn't mean to guarantee that they are authentic, by so doing. I suppose it is, but I really don't know.

By MR. GALIHER:

Q. I wonder, could you do this for me, why don't we pass that for a minute and see if we complete your testimony this evening, then I might ask you to check into that overnight, if you would, and perhaps you could call me and I could then represent to Mr. Pettibone what I found.

MR. GALIHER: This, of course, is in accordance with the Federal Regulations. Defendant's Exhibit No. 4, Your Honor, that has been introduced into evidence, shows that it is a requirement to execute a release, such as was executed here, as you will see. I assumed, when Mr. Pettibone gave this to me, that this release was executed by Mr. Chalmers in accordance with that requirement. I will try to find out overnight, if you want me to.



MR. PETTIBONE: If I may offer a suggestion at this time, one of the witnesses appears to be Captain McCoy, 203 who is present. I have never interrogated him on that point, so I don't know what his answer will be—

MR. GALIHER: I haven't, either. May I do so, Your Honor? He is back here.

THE COURT: All right.

MR. GALIHER: Were you present, Captain McCoy, when this release was executed by Mr. Chalmers?

CAPTAIN MCCOY: Yes, I think my signature is on it.

MR. GALIHER: Thank you. I have a more legible copy, Your Honor, perhaps you would rather have this one than that one, which is indiscernible in certain parts. May this be substituted and marked, if you please?

THE COURT: Yes, it may be marked with the same number.

(Plaintiff's Exhibit No. 8 was received in evidence.)

MR. GALIHER: I think of one thing more, Your Honor:

THE COURT: All right.

By MR. GALIHER:

Q. Are you also instructed, under an Air National Guard regulation of the Department of the Air Force, that you and other technicians fall within and are subject to the purview of the Hatch Act? A. I believe so, yes.

MR. GALIHER: Thank you, that is all.

204 Your Honor, I will comment on that later. I am sure you know the Hatch Act.

THE COURT: Oh, yes, I know the Hatch Act.

Mr. Pettibone, I don't know whether your estimate of the time you will take, will be as inaccurate as Mr. Galiher's or not.

MR. PETTIBONE: I am afraid I am going to be a bit inaccurate because more matters came up on direct examination than I had anticipated.

THE COURT: Well, you proceed, we will see.

## CROSS-EXAMINATION.

By MR. PETTIBONE:

Q. Col. Kilkowski, when were you first employed as an air technician? A. I was first employed as an operations officer, 104th Fighter Squadron, in January of 1951.

Q. By whom were you employed at that time? A. By the Air Technician Base Detachment of Harbor Field, where we were located at the time. Are you speaking of an individual?

Q. Both an individual and an organization is what I am seeking to find out about. First of all, do you remember what individual employed you? A. Major Souders was the Base Detachment Commander at the time, who had 205 the basic discussion of the job. I was contacted for the job by Col. Warfield, the Commander of the unit at that time.

Q. What was Col. Warfield's status? A. He was Commander of the 104th Fighter Squadron at the time.

Q. Was he an officer in the Maryland Air National Guard? A. Yes.

Q. Was he an air technician? A. No.

Q. He was a military officer in the Maryland— A. He was Commander of the 104th Fighter Squadron.

Q. When you were employed, was there an employment order of some kind issued? A. The order was issued by the State Adjutant General, Military Department.

Q. Who was your immediate supervisor at that time? A. Major Souders, who was Base Detachment Commander.

Q. Now, subsequently, you became the Base Detachment Commander, yourself, of this unit? A. I became Base Detachment Commander of Harbor Field in May of 1956.

Q. And you were so employed as an air technician on May 20, 1958? A. No, it was a different base. You are 206 not employed as an air technician for a unit, you are employed as the Base Detachment Commander of a base. Now, my base of operation in 1956 was Harbor Field. We subsequently moved to Martin Airport and

I became the Base Detachment Commander of Martin Airport in 1957.

Q. Well, I guess what I am getting at is, who would technically be your employer during that period from 1956 to the date of this accident, 1958? A. My employer?

Q. Yes. A. I was employed by the Military Department of the State of Maryland as an air technician.

Q. And you were so employed on May 20, 1958, and prior thereto? A. Yes, sir.

Q. And in that capacity, in that employment, who was your immediate supervisor? A. As Base Detachment Commander, I reported to the Adjutant General.

Q. Adjutant General of the State of Maryland, you mean? A. Yes.

Q. Now, you also had military status, that is to say, you were a commissioned officer in the Maryland Air National Guard at the same time, is that right? A. Yes.

Q. When were you first commissioned in the Maryland Air National Guard? A. December 12 of 1946.

Q. And in May of 1958, you were commissioned as a lieutenant colonel in the Maryland Air National Guard? A. Yes.

Q. Did you hold any other military commissions or ranks or grades, whatever you call it? A. There is one commission, it is a commission of the Maryland Air National Guard, a certain rank.

Q. How were you appointed to your rank in the Maryland Air National Guard, who appointed you to it? A. The appointment to the rank in the Air National Guard in a State is a function of the State, in order to qualify for Federal pay in that status, it is Federally Recognized.

Q. Now, while you were Base Detachment Commander—that is an air technician position? A. Yes, sir.

Q. While you were Base Detachment Commander of this 104th unit in May of 1958, Captain McCoy was also employed in an air technician status and assigned to that unit, is that correct? A. Yes, sir.

Q. Were you, therefore, his immediate superior in  
208 connection with his employment? A. Yes, sir.

Q. And were you chargeable with keeping a record of his hours of attendance? A. It was my overall responsibility. The direct responsibility was delegated to the administrative officer.

Q. Well, in other words, either you, yourself, or by direction to your subordinates, you controlled his work? A. Yes, sir.

Q. Now, how many commissioned officers in the Maryland Air National Guard were assigned to the 104th at that time, that is to say, in May of 1958? Approximately how many will be sufficient. A. It is a guess, about 40 to 50.

Q. And were some of those also employed as air technicians? A. Yes, sir.

Q. That would include Captain McCoy? A. Yes, sir.

Q. About how many were so employed as air technicians? A. Again it would be a guess, it would be about eight.

Q. And the others, the other officers assigned to the unit were not employed as air technicians? A. No, they were not.

Q. Were they employed in other civilian pursuits, apart from the National Guard, is that what you mean?  
209 A. Yes.

Q. How many of these officers were rated and were flying officers? A. About 35 were rated in the unit, military status.

Q. Did those rated officers, who were not air technicians, perform proficiency training flights during that period of time, that is to say, in May of 1958? A. Did they perform proficiency training flights?

Q. Yes. A. It was associated with their duties, yes.

Q. You mean associated with their military duties? A. Associated with their air technician duties.

Q. I am referring to those officers assigned to the unit, who are not air technicians. A. Who were not air technicians.

Q. Yes. A. Yes, they did perform proficiency training flights.

Q. And also those who were assigned to the unit as air technicians performed proficiency training flights also, is that correct? A. Well, you are getting into an area that is hard to define. There is no definition in air technician structure of what a proficiency training flight is. When you use the term "proficiency training flight," you have to go back to the military status, the two are  
210 intertwined. We don't have a definition, as an air technician, of what a proficiency training flight is, so I would say yes in both cases.

Q. In other words, all the commissioned officers assigned to the unit, perform proficiency training flights in their military status? A. Yes.

Q. It was coincidental that some of them were also employed as air technicians? A. It was coincidental, if they happened to be on flying status and had a reason to fly associated with their position.

Q. Yes. At the time your deposition was taken, Col. Kilkowski, you stated you were Assistant Adjutant General of the State of Maryland. Are you still holding that position at the present time? A. I think the deposition is wrong, if it so states. I was Deputy Chief of Staff.

Q. Perhaps I misstated it. I believe you are right, it did state Deputy Chief of Staff of the Military Department of the State of Maryland. Do you still hold that position? A. I hold that position, yes.

Q. How long have you held that position? A. Since May of 1959.

Q. Now, on May 20, 1958, to your personal knowledge, Captain McCoy was an employee of the Military Department of the State of Maryland in an air technician status? A. Yes.  
211

Q. He was also a rated officer on flying status, assigned military status in the 104th Fighter Interceptor Squad? A. Yes.



Q. On May 20, 1958, you had authority to authorize rated officers, assigned to the unit, to perform aerial flights, is that correct? A. Yes.

Q. Did you have authority to authorize aerial flights by anyone who was not a rated member or on flying status?

A. With the crew duty, you mean?

Q. To serve as pilot of a flight? A. Well, I could authorize any person who qualified in accordance with the Air Force regulations and we so did; for instance, an Air Force officer associated with the Martin Company could be attached to us for flying and I can authorize him to fly the aircraft, if he receives the basic authority from his superiors and our superiors in the National Guard Bureau. In fact, I will even cut a flight order for that man's flight. However, I have no authority over him or command jurisdiction. I think the "flight order" is a misnomer in the fact that a flight order does not allow me the right to order that pilot what to do, it is ordering the aircraft to flight, having complied with the regulations. And for instance, I have no command authority over the Air Adviser, Major Britton, yet each time he flies, we cut a flight order on him, we have to, because that is the way it is prescribed in the regulations.

Q. Well, now, when an individual applies to you, as commanding officer of this unit, for permission to fly one of the aircraft assigned to it, what requirement do you have, with respect to his right to fly such an airplane? How do you determine whether he has a right to fly such an airplane? A. It is in the regulations.

Q. Which regulations? A. I don't remember the number right now, but the regulation which prescribes a flight order, I think, is 60-1. There is also another regulation that has a listing of the individuals who would be authorized to fly these aircraft, and the basic qualification that we are associated with is that he have an aeronautical rating, that he be on current flying status, whether this be an Air Force officer, an Air National Guard officer, a Navy officer on assigned duty with us, most anyone that fits

that category. We don't get into all the categories because we don't have plan representatives, such as the Air Force does.

Q. In other words, before you issue a flight order allowing that individual to fly one of the planes assigned  
213 to your unit, you have to satisfy yourself that he falls into one of these categories, is that correct? A. Yes, he has to fall within the category, we have to have the proper allocation of hours for support of that flying, yes.

Q. Well, let me put it this way to you, Colonel. In order to fly, an individual has to have military status in compliance with the regulation which you referred to, does he not? A. Yes, he does.

Q. And an individual who does not hold such military status as defined in this regulation, would not be authorized to fly? A. Yes, sir.

Q. Now, in addition to a flight order which is required, there is also a flight clearance which is required to permit an individual to take off on a flight, is that true? A. Yes, sir.

Q. What is the nature—what is the difference, first of all, between a flight clearance and a flight order, what is the distinction between them? A. The flight order is the order which assigns the crew position, the aircraft authority to expend the fuel and lubricant for that flight, it is a  
214 listing of all the flights that your aircraft take, for the record. A local clearance is that form which is filled out to clear the flight for flight from that base, to insure that the aircraft is operating within the prescribed fuel allowances, we know it is going to be in the local flight area in case of some mishap, and that it will fly according to our general procedures.

Q. Now, does a flight order show the purpose of the flight which is authorized? A. I don't believe it did at that time. It might have changed, our new forms that are out now, Mr. Pettibone—but I think the purpose of the flight at that time was for general proficiency.

Q. Let me show you Plaintiff's Exhibit No. 2. This is Flight Order No. 105, dated May 20, 1958. Does that indicate the purpose of the flight made by Captain McCoy on that date? A. That is right, it is a general indication to maintain flying proficiency.

Q. Where does that show on that order, where do you find it on there? A. In the wording of the order.

Q. You mean right in the text of the order, itself? A. Yes.

Q. Was Major Joseph Maisch a duly authorized officer to issue flight orders in your name on May 20, 1958? 215 A. He is the operations officer, yes, sir.

Q. Now, does a flight clearance, which is issued, normally indicate the purpose or reason for a flight? A. It will indicate the general nature of the flight.

Q. Well, let me show you Plaintiff's Exhibit No. 1, which is the local flight clearance which Captain McCoy testified that he issued to clear his own flight on May 20, 1958. Is there anything on there that indicates the purpose of that flight? A. Mission symbol, which I say is general, we were operating under general instructions that tactical aircraft to the unit, our jet fighters and also the T-33 trainers which were tactical trainers, would use the Mission "O" at that time.

Q. And is that indicated on there, is that what that "O" stands for? A. Yes.

Q. Well, now, when Captain McCoy first came to you to discuss this particular flight, was that on the Saturday preceding the flight? A. The best I can remember, it was.

Q. And did he indicate to you at that time that he would make a general proficiency flight later the following week?

A. He indicated to me that he had a gentleman that 216 was interested in our program, would it be all right at some future date on one of his flights to take him along. I asked certain questions, what was his status, was he cleared in accordance with the regulations, I can't remember the exact conversation but it was along that general nature. He indicated that he was, and the follow-

ing Tuesday morning, I understand the gentleman came down to the field, Captain McCoy came into the office and told me that he was there, would I clear the flight, because at the previous discussion it was merely tentative. I gave him the usual discussion that we have whenever we take any passenger up, to take it easy with the individual because they frequently get sick on the first jet ride and he assured me he wouldn't do anything that would enhance the man's possibility of getting sick and we discussed the thing in general, who the boy was, and he departed for the flight. I was in conference with another officer, a supply officer at the time.

Q. Did Captain McCoy indicate the duration and extent of the flight? A. Generally, any flight of that nature is generally about an hour long, an hour to an hour and fifteen.

Q. Was any mention made by Captain McCoy or by yourself about it being a general proficiency flight, or a flight for operational proficiency, which I believe is 217 the term you used a moment ago? A. Just in general terms, by mutual understanding.

Q. Was it your understanding it would be a general proficiency flight for Captain McCoy? A. Within the realm of what I have explained here before, that there are purposes associated with a general proficiency which you can't draw a line and say that this is strictly for proficiency, there are other associated things along with it. If Captain McCoy didn't have a requirement to fly, he wouldn't be flying at all that day.

Q. I didn't ask you to confine it exclusively to proficiency. My question was merely, was it your understanding this would be a proficiency flight? A. In general, yes, sir.

Q. Then the flight was not made for any specific maintenance purpose, as far as you know?

MR. GALIHER: I object to that, I think he has explained this very fully.

THE COURT: I think we will suspend right now for the day. You are not anywhere near through, are you?

MR. PETTIBONE: No, Your Honor. I seem to have about a dozen points left here that I have to inquire into.

THE COURT: Colonel, I will have to ask you to return tomorrow. Be here at 10 o'clock, promptly.

THE WITNESS: Yes, Your Honor.

(Whereupon, at 4:15 o'clock p.m., the hearing was recessed pursuant to convening at 10 a.m., June 1, 1961.)

219

Washington, D. C.

Thursday, June 1, 1961

220

## PROCEEDINGS

Lt. Col. Victor F. Kilkowski.

the witness on the stand at adjournment, resumed the stand and was examined and further testified as follows:

## CROSS-EXAMINATION.

By MR. PETTIBONE:

Q. Colonel Kilkowski, what is a flying training period?

A. Flying training period is period of inactive duty training which is assigned for our flying personnel on the basis of 36 per year. The requirement is that you can only get, say, twelve and one quarter of the year, and they are prescribed for flying training over and above the normal training assemblies that would be authorized in a reserve status, which are 48 per year and your 15 days field training.

Q. I see. Are these periods, flying training periods, authorized by law? A. I don't know whether they—I think they are authorized by the National Guard Bureau. Authority to the State to have the people in that status.

Q. You mean by regulation of the National Guard Bureau. Would you know the number or reference to that?

A. I am sorry. I don't know the number offhand.

Q. Who participates in flying training periods? That



is to say, of those individuals assigned to the unit  
 221 which you commanded on May 20, 1958, which if any  
 members of your organization participated in flying  
 training periods? A. Flying training periods are author-  
 ized for officer and airmen personnel who have either an  
 aeronautical rating and current flying status or crew duty  
 with the flying status.

Q. Did such personnel who held such ratings on and  
 before May 20, 1958 participate in such flying training  
 periods to your knowledge? A. Yes, sir.

Q. Did that include Captain McCoy? A. Yes, sir.

Q. Of the people who participated, the personnel who  
 participated in flying training periods, were some of them  
 employed as air technicians? A. Yes, sir.

Q. And were there others who were not so employed as  
 air technicians? A. Yes, sir.

Q. When an individual participates in a flying training  
 period, how is he carried for pay purposes on the records  
 of your organization, or how was he carried on the records  
 of your organization on and before May 20, 1958? A. When  
 an individual participates in flying training period  
 222 he is carried present for duty inactive duty status,  
 inactive duty training status, and fulfills the require-  
 ments of the regulation which at that time were four hours  
 of time attendance, an hour fifteen of flying.

Q. What kind of a record is kept? What is the title of  
 it, or the name or number? How do you describe it and  
 define it? A. I don't know the exact number of it. It is  
 listed on a military payroll. It's a training assembly at-  
 tended by a member of the unit.

Q. Do the people who are so listed as present for duty,  
 for such duty, receive pay for the performance of that  
 duty? A. Yes, sir.

THE COURT: When you say they are present for duty,  
 they are present where?

THE WITNESS: Your Honor, present for duty in regard  
 to—we are speaking in terms of flying training periods  
 which are assigned for the principal purpose of flying time,

so that the officer in question would prepare a flight, undergo his general briefing, go out to the aircraft, make his flight, and land, and generally this encompasses about a four-hour period.

THE COURT: I understand all that. But you said that when they are having this flying training period  
223 that they are present for duty on an inactive duty status. And they are inactive in what status, and they are present for duty in what capacity?

THE WITNESS: Present for duty at the organization in an inactive-duty training status. I might clarify that members of the Air National Guard can be present for duty in various statuses; some of which are inactive-duty training, active duty for training, inactive duty training without pay. These are statuses that we have to record in the unit, and in this particular case the flying training period falls under the inactive duty training.

By MR. PETTIBONE:

Q. These statuses which you have just referred to all refer to military statuses, do they not, as distinguished from air technicians status? I mean, at least they are different from air technician status? A. Yes. I think the word is "armory drill status," which follows over from the old National Guard, but the present definitions are "inactive duty training," "active duty training," "inactive duty training without pay."

Q. When a person is present for duty in any one of these statuses which you have just defined or described, he receives military pay for that duty, does he not? A. He does, but not in all cases.

Q. Well, generally he would, though? A. If he is  
224 on inactive duty training on a prescribed training assembly, or on a flying training period, yes, he would receive pay.

To further clarify, if he had qualified for all his flying training periods and still had a general requirement to fly, he would have to fly on an inactive duty training status

without pay. Because he has qualified for all his pay training assemblies.

Q. In other words, when the funds are exhausted, if he continues to fly in this status, he does it without pay, then; is that it? A. It is not the funds are exhausted. It is that the man has qualified for all the pay periods that he can qualify in his reserve status.

Q. I see. Only a certain number are authorized per year, is that right? A. That is true. There are 36 flying training periods authorized per individual per year in addition to his 48 general training assemblies and his 15 days field training.

Q. Then would it be correct to say that for the first 36 times that he performs this duty he is eligible for pay and if he performs it more than the 36 times he would not be eligible for pay then? A. No, that would not be true.

225 Q. Explain why it isn't. A. Well, flying training period is a four-hour period, and if an officer reported for duty for flying training, say on a Saturday, and he flew in the morning, it is entirely possible that he could be present all day long and fly in the afternoon too. Now, the regulations prescribe that you can only get one of these flying training periods in a day. So that in the morning he would be present for duty; flying training period would be inactive duty training. In the afternoon, since he has already qualified for that pay, he would be present for duty on an inactive duty training status without pay.

Q. All right. I think that makes it quite clear. I would like to ask you this, though. The personnel who participate in these flying training periods, whether with or without pay, do so by virtue of their military status and their rating as a flying officer, or an airman; is that correct? A. Yes, sir.

Q. Now, some of those people would be air technicians and some would not? A. Yes, sir.

Q. In Captain McCoy's case he was an air technician, of course? A. Yes, sir.

226 Q. But he also participated in flying training periods sometimes? A. Yes, sir.

Q. In this other status for which he received pay sometimes? A. Yes, sir.

Q. Of course an air technician receives pay when he is performing air technician duties, does he not? A. Yes, sir.

Q. He receives his pay from a different source, though, and in a different manner, does he not? A. Receives the pay from the same source but in a different manner.

Q. I realize that. It all comes from the same source but it is carried on a different payroll and a different kind of payroll? A. Yes, sir.

Q. And the accounting principles are different, are they not? A. Yes, sir, they are.

Q. Can an individual receive pay for the same period of time both as an air technician and for a flying training period in one of these military statuses you talked about?

227 A. He can receive pay in both statuses only under two conditions: one, if he is on annual leave or if he is on compensatory time, which in both cases would mean that he would not be present for duty in his air technician status, and therefore would be eligible to be available for the military status. He cannot be present for duty for pay purposes in both statuses at the same time.

Q. Yes. That was what I was getting at. In other words, if he is performing training for which he receives military pay, he cannot be carried present for duty as an air technician at the same time. He either has to be on annual leave or on compensatory time, or just not working at all? A. That is right.

Q. If an individual is performing duty in one of these statuses, military status you described during a flying training period, and he were to be injured, how does he receive compensation for his injuries? First of all, let me put it this way: Is he entitled to receive compensation if he is injured in such status? A. Yes, he is.

Q. Under what provisions does he receive compensation for that injury? A. I am not exactly positive, but I think it is Public Law 881.

Q. Let me perhaps help you out by referring to  
 228 Title 32 of the U. S. Code, Section 318, which provides as follows:

A member of the National Guard is entitled to the hospital benefits, pay and allowances, pensions, and other compensation provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under Section 502, 503, 504, or 505 of this title.

And then it continues on.

Would that be the authority under which he would receive compensation for injuries in that status? A. He would receive compensation and we would work with the regulations which prescribed it. If he is injured, and the injury goes beyond the training day, he would be hospitalized at the nearest military hospital, Air Force preferable, and receive his compensation. It would be requirement that a line of duty investigation be pulled in order to insure that he was in line of duty at that time.

Q. All right. Now let us consider the status of an air technician, on the other hand, for a moment. Sometimes they become injured or disabled during the course of the performance of their duties.

229 Let me withdraw that question just for the moment and go back to what we were talking about with regard to compensation benefits for a member of the military service or a person in military status performing training duty. I refer to Section 318 of Title 32. I believe I should also have referred to Section 319 of Title 32, which specifically provides as follows:

Under regulations to be prescribed by the President, a member of the National Guard who is injured in line of duty while performing an aerial flight is entitled to the benefits of subsection (b).



Which then goes on to provide benefits. In other words, if an individual were performing an aerial flight as part of his flying training period duty, he would be entitled to the benefits thus provided by the section which I just referred to, would he not? A. He would be provided by benefits. I am not familiar with the law, Mr. Pettibone.

Q. There are regulations, I believe, which implement this section of the Code which I referred to. There are regulations covering this field that you know of? A. Yes, there are.

Q. You don't happen to remember the number of them, offhand? A. No, sir; I am sorry, I don't.

230 Q. The procedure generally, though, to your knowledge would be to have such an individual go to a military hospital; is that right? A. Yes, sir.

Q. Would he also receive, as far as you know, other benefits? That is to say, in addition to the medical treatment? A. I believe that if the injury is sustained he would receive other compensation. I am not too familiar with all the details of it.

Q. Yes. But do you know that there are provisions to that general effect? A. Yes, sir. There are provisions for both disability and death as a result of flying an aircraft.

Q. Incidentally, I believe I referred to a flying training period. Actually, though, these benefits would apply to an individual who was performing an aerial flight under any conditions, would it not?

MR. GALIHER: I object to that question.

THE COURT: What is the ground of the objection?

MR. GALIHER: I don't believe that it has any materiality to these sections that have just been referred to.

I will withdraw my objection. I withdraw my objection.

231 THE COURT: Do you want the question read, or do you understand it?

THE WITNESS: I would prefer to have it read, Your Honor, thank you.

THE COURT: Very well.

(The last question was read by the reporter.)

A. No, they wouldn't apply under any conditions. The conditions that you just outlined would apply if he were flying at field training, which is inactive duty training status. It would also apply on an inactive training status and under inactive training status without pay. They would not apply if he were carrying out his duties as an air technician, but under which you would be covered under the Federal Employees Compensation Act.

Q. Would it apply, then, to all of the various statuses, that is to say, the military statuses which you have referred to in your testimony? A. To the best of my knowledge, it would apply to all the military statuses.

Q. I see. But not to the air technician status, that is to say, a person injured while performing air technician duty?

A. That is true.

Q. Now, returning to air technicians for a moment. Of course sometimes they are injured or disabled. 232 Sometimes they even receive fatal injuries during the performance of their duties. What provisions are made for compensation in those cases? How are those benefits handled? A. Air technicians—If an individual is injured while present for duty in his air technician capacity, he is covered under the Federal Employees Compensation Act, which is administered by the Department of Labor.

Q. Well, have you had occasion, on or before May 20, 1958, to make reports to the Department of Labor concerning injuries to air technicians employed by the unit of which you were the base tactical commander? A. I don't believe our reports go to the Department of Labor. They go to the United States Property and Fiscal Officer.

Q. I see. What kind of reports do you make in those cases? Do you have a form you use? A. C.A. forms which have been discussed prior in this hearing. CA-1, CA-2, 16.

Q. What specifically is a CA-1? A. I can't remember all the details of it, but I believe the CA-1 is notice of report to the superior of an injury of an employee by an employee. And the information relative to the injury or sickness, or whatever it happens to be, is put on the form.

33 A request for admission for treatment, I think that is the CA-2. I am not sure about the numbering system.

Q. When you forward these forms to the Property and Fiscal Officer, do you have to sign them? A. Yes. We execute them at the base; except those that are executed by the employee.

Q. On May 20, 1958, and immediately thereafter, who was the Property and Fiscal Officer for the State of Maryland? A. Colonel Irvin Ebaugh. E-b-a-u-g-h.

Q. Where was his office located? A. Office was at the State military reservation at Havre de Grace, Maryland.

Q. That is some distance from Martin Airport where you were located? A. I think it is approximately 30 miles.

Q. How do you get the reports to him? Do you mail them? A. We would get them there by the most expeditious means; either mail, or if we had a courier going up there for some other business.

Q. I believe I asked you before about how many persons were assigned to your unit who held flying status and who engaged in aerial flights. But to refreshen me would you again tell me how many such persons there were on  
234 May 20, 1958. A. I think there were a total of about 35.

Q. Were they all commissioned officers? A. No. I think we had at that time one airman, technical sergeant I believe it was, on flying status in regard to the C-47 type aircraft.

Q. Just that one individual. But the others held commissions in the National Guard, is that right? A. Yes, sir; they held commissions in the National Guard, Air National Guard.

Q. And I believe you said about five of those individuals were also employed as air technicians; is that correct? A. There were five or six employed as air technicians. I might add that we also had one other individual, the Air Force adviser, who was on flying status with the unit, attached for flying.

Q. All of these individuals, including the air technicians, from time to time engaged in aerial flights as part of flying training periods, did they not? A. Yes, sir.

Q. Were flight clearances and flight orders issued in each instance when those flights were performed? A. Flight orders, which I stated yesterday is in all respects not a true order because there can be persons named on that order over which the commander has no jurisdiction.

235 It is an order to get the aircraft airborne, and there is a local flight clearance which is filled out in accordance with the prescribed Air Force regulations in order to clear the aircraft for flight, as I stated, to insure it has the proper fuel reserve, proper pilot. It is a record of the flight, in addition to a clearance for the flight.

Q. Well, with those explanations, nevertheless, flight orders as such, though, were issued, were they not, and the flights were listed and the individuals were named? A. Yes.

Q. In each case? A. Yes.

Q. And how are those flights normally referred to? How are they classified? Are they called proficiency flights? A. Generally, they were called proficiency flights. "Proficiency" is a very broad word, encompassing a lot of things. I don't know whether you understand, or I understand, what the true word "proficiency" means in flying.

Q. Well, isn't it customary, though, to refer to these training flights which are made by rated officers during these flying training periods, which, as you have explained, they are carried in military status and receive military pay, aren't they customarily referred to as general proficiency flights or operational proficiency flights?

236 Isn't that the custom of the military profession generally, including the National Guard? A. Yes, sir.

Q. Would it be correct, in view of what you have just said, to define the term "proficiency" as you have used it as meaning training in aerial flights for this purpose? In other words, are "proficiency" and "training in flying"

synonymous when used in this manner, to describe this type of activity? A. I think I am not being very clear. But perhaps I can explain by an illustration.

Q. All right. A. An individual can go on a flight and satisfy the requirements of two directives at the same time, one of which is Air Force directive or regulation 60-2, which concerns minimum proficiency training. It prescribes a minimum amount of flying time that must be obtained for individual proficiency. On that same flight he could be satisfying the requirements of ConAC directive, which prescribes the training of the unit. On this same flight, you might call one operational training and at the same time proficiency. It depends on which regulation you are looking at when you refer to the flight.

Q. In one sense, though, they both constitute training, don't they? A. They constitute training.

Q. So that in that respect "proficiency" and "training" would mean the same thing, then? A. For all practical purposes, I would say proficiency, training--you have a classification of flying which is annual proficiency, which is only assigned to those pilots who become combat ready, and they maintain that combat readiness, so you could say they are ready and combat ready, but they are still training. They are very difficult things to try to explain to a layman when they are difficult to understand by pilots.

Q. Now, on May 20, 1958, Captain McCoy stated to you personally that he wished to make an aerial flight, did he not? A. Yes. The purpose behind his stating to me was the fact that he had a passenger, if we had an understanding or SOP in the unit that that had to be directly approved by the commander in order to carry any non-crew member.

Q. Did he also state another reason for his making that flight was his own general proficiency? A. Yes, sir; we had that understanding.

Q. Now, of course Captain McCoy was also employed in maintenance duties as an air technician? A. Yes, sir.



Q. And I believe you testified and stated that in  
238 your opinion a maintenance man, whenever he flies,  
generally observes the quality of the performance  
of the aircraft; is that correct? A. Yes, sir.

Q. So that you have stated that, since he was a maintenance man, whenever he performed an aerial flight Captain McCoy would automatically be checking the quality of the performance of the aircraft? A. That is a secondary portion of any flight, even though he would be doing that, yes, sir.

Q. In so far as you know, was the flight made by Captain McCoy on May 20, 1958, made for any specific maintenance purpose or function? A. No; it was not.

Q. Colonel Kilkowski, were you on Federal active duty on May 20, 1958? A. No, sir.

Q. Was Captain McCoy on federal active duty on that date? A. No, sir.

Q. If you and Captain McCoy were not on federal active duty on that date, was there any Regular United States Air Force officer on federal active duty who had command authority over either you or Captain McCoy? A. No, sir.

MR. PETTIBONE: No more questions, Your Honor.  
239 Except I would like to say this, if I may at this time, with Your Honor's permission. I would like to ask that the witness be held as there is a possibility I may wish to call him in connection with other matters in the event those matters are developed by the plaintiff, which they have not been so far.

#### REDIRECT EXAMINATION.

By MR. GALIHER:

Q. Colonel Kilkowski, you told us yesterday, and then I believe you told Mr. Pettibone today, that Captain McCoy was carried on your rolls at your base on that day up to and including the flight in question as an air technician. Is it not a fact that, while it may be necessary

initially to have a military status to fly one of your planes, a person flying the plane may be performing at the time duties of an air technician? A. Yes, sir; he may.

Q. Mr. Pettibone asked you as to the purpose indicated to you by Captain McCoy for this particular flight in question. He did not mention any specific maintenance purposes for this flight. Was that necessary? A. It wouldn't be a specific maintenance purpose for the flight. It also wouldn't be necessary for him to so inform me. There are procedures whereby we have the operations office, have the maintenance office, and each flight does not have  
240 to be cleared through me personally as long as it is in conformance with our regulations.

Q. So Captain McCoy might be checking on maintenance in a particular flight and not mention to you that that was one of the things he was doing? A. He could not be checking purposely for maintenance on this flight because if he had, we would not allow a passenger on the flight.

Q. What about checking on a particular flight the operation of the plane, the instruments, and all of that sort of thing? A. Yes, sir. In each flight that takes place, particularly by a maintenance officer, he would be, by the very nature of his function and duty, be more apt to observe the product that is being maintained by his people if he were a maintenance officer. This is why it is desirable and I think it is why General Wilson stated that he would require that his maintenance officer as well as his base detachment commander be flying officers. Why? Because he will get better maintenance, safer aircraft, and as a result a better unit.

Q. You also mentioned a number of other reasons; to check the air strips, to check the entire personnel, and a number of other things; is that correct? A. That is true.

241 Q. All of which could very well have been included in this particular flight? A. That is true.

Q. The only type of flight that you cannot carry a pas-

senger on is a specific check flight; is that right? A. That is true.

Q. Now, did you also mention, or I don't believe it was asked, that one of the reasons indicated to you for this particular flight was to interest this man in recruitment for the Air Force Flying Training School? A. To be perfectly clear, it is not the reason for the flight; it is the reason for the passenger flying in the aircraft.

Q. The reason for the passenger being in the plane? A. Right.

Q. The flight would have proceeded anyway? A. Yes.

Q. And that was the United States Air Force Flying Training School? A. That would be the quota given to the National Guard Bureau. The individual would go to the United States Air Force Flying Training School since the Air National Guard does not operate a pilot training school. Then the individual would be returned to us with the requirement that he stay on duty with the Maryland Air National Guard for a minimum of three years.

Q. Mr. Pettibone asked you about Section 318 and 319 of Title 32 of the U. S. Code. A. Yes, sir.

Q. Concerning benefits, hospitalization, and otherwise, that might be paid to persons injured while on active duty? You recall those sections he referred to you? A. I don't remember the words "active duty." But I remember him referring to them.

Q. Or flying training period? A. That is not "active duty," sir. That is inactive duty training.

Q. Inactive duty training. I beg your pardon. Captain McCoy did not receive any benefits under those sections, did he? Was he not paid under the United States Employees Compensation law? Or did he not receive his benefits under the United States Employees Compensation law? A. You use two phrases. You use "pay" and "benefits."

Q. I meant benefits. A. His pay continued in accordance with the air technician sick leave authorization. His bene-

fits, hospitalization, doctor bills and what not, I understand were taken care of by the Federal Employees Compensation Act.

Q. And did you handle his case as a routine case just the way you handle other cases involving air technicians who might be injured in the line of duty? A.

243 I don't think that there was anything routine—other than routine, except that Captain McCoy's hands were burned and he could not sign the form and permitted Captain Windlyn, my administrative assistant at the time, or personnel man, to execute the form for him, in his presence.

Q. There has been some testimony which indicates that he did not fly after this accident. He requested that he be taken off flying status. Would you tell us the reasons behind that, if you please. A. Captain McCoy was injured as a result of this accident, as you know. It has been testified to. He could not fly. His hands, when they were healing, became very stiff. He was not allowed to fly for—I don't know the period of time. Also, I would say two or three months, when he started to be concerned about this thing as a subsequence to the accident. Also, he was, as a result of the accident, absent from his maintenance duties. So that when he came back he had the normal supervisory workload that would pile up in the absence of a supervisor. And he realized that he would have difficulty picking back up both his maintenance supervision duties plus catching up on all the flying time. I think, also, the accident itself and the mental approach to the things caused him to submit a voluntary request for suspension from flying status. This request was

244 forwarded to appropriate authorities and, since we don't control either placing on or taking off of flying status locally, it was approved by the Air Force that he not be on flying status.

Q. Is that the United States Air Force? A. Yes, sir.

Q. And also had Major Mitchell, the maintenance supervisor, returned in and around that period? A. Major

Mitchell returned just either about that time or shortly thereafter. And our intentions were to use the services of Major Mitchell as a base maintenance supervisor in a flight-test capacity. However, I don't think that that would be the reason why Captain McCoy is not flying, because, as a commander, I would have preferred to have both my maintenance supervisors on flying status and capable of checking the equipment.

Q. Thank you, sir.

Captain McCoy was not engaged in a flying training period at the time of the accident? A. No, sir; he was not engaged in a flying training period in accordance with the regulation. Now, the court of law decides if he was engaged in flying training; I couldn't decide that. He could not apply for flying training period by virtue of the regulation. He had accumulated his maximum of 36. He was present for duty, marked present as an air technician. And this would preclude his possibly applying for flying training period.

245

Mr. GALDIER: Thank you, sir.

#### RECROSS-EXAMINATION.

By Mr. PETTIBONE:

Q. Colonel Kilkowski, when an individual has been performing an aerial flight prior to a military training period or otherwise, in his military status, and he receives injuries for which he would be entitled to benefits under certain basic provisions of United States Code, do you customarily make a report to anyone concerning those injuries with a view toward supporting an application for the award of such benefits as are thus provided by law to the injured individual? A. Are you speaking of in military status?

Q. That is right. I am talking about the military status. Any one of these military statuses you told me about before. A. I don't know the number or name of it right now, but there is a report, and I think there is a require-



ment that if the injury is to be sustained beyond the period of training, a line of duty investigation be performed in order to support the claim for benefits.

Q. Then normally when such an individual in such status is injured you would fill out and forward those forms  
246 in accordance with this general procedure; is that right? A. Yes.

Q. You have also stated, I believe, that when an air technician receives injuries he is entitled to benefits under the Federal Employees Compensation Act and you have other forms which you then fill out and forward in such cases? A. Yes, sir.

Q. And these two sets of forms, these two procedures, are different, are they not? A. Yes, sir; they are different.

Q. Now, with respect to Captain McCoy's injuries on May 20, 1958, which of these two procedures did you follow? A. We followed the procedures of the Federal Employees Compensation Act.

Q. And you did not forward the forms or fill out the forms or follow the procedure for injuries to people in military status in his case? A. That is true.

Q. You are a rated flying officer yourself, aren't you, Colonel? A. Yes, sir.

Q. And to obtain your rating, and I suppose from time to time since you obtained it, you have had to undergo courses of training for flying officers, have  
247 you not? Courses of training—you have attended flying schools, in other words? A. Yes, sir.

Q. Incidentally, how long have you held a flying rating? A. Since February 1944.

Q. Now, you are familiar, then, I take it, with the training which is normally provided in these flying training schools for applicants for flying ratings, and for the training of people who already hold such ratings; is that correct? A. Yes, sir.

Q. Does part of that training include instruction, at least in a general way, concerning the maintenance of aircraft? A. Yes, sir; it does, in a general way.

Q. I take it that every rated officer in flying status will at one time or another pursue these courses of training or instruction which I have just referred to. That would be a necessity, would it not? Generally, at least? A. Well, it would be a necessity that they go through pilot school. It wouldn't be a requirement that he go through any other Air Force schools.

Q. Well, he would have to attend a pilot school  
248 once, though, in order to get the rating, would he not? A. Yes.

Q. He would have to attend it for a period of time to complete the course? A. Well, are you speaking of the Air Force Pilot School?

Q. Yes. A. He could attend the Air Force Pilot School. This is the normal procedure for attainment of an aeronautical rating. He could also attend the Navy or one of the other branches of the service flying school and qualify for his rating if the Air Force sees fit to recognize such under a Flying Evaluation Board proceeding.

Q. All of these schools, though, in addition to other things which they teach, also give some instruction in maintenance, do they not? A. Yes, sir; they do.

Q. So that one could conclude therefore, I assume, that any rated flying officer would have some knowledge of maintenance of aircraft, would he not? A. He would have a limited knowledge.

Q. Well, he would have some knowledge? A. Well, definition "some," or limited. I am not trying to be evasive but—

Q. All right. All right. I accept your terminology.

249 Well, then, couldn't you say that every officer, whenever he performed an aerial flight, is paying some attention to the performance of the aircraft from a maintenance point of view? A. Pay some attention to it. But it wouldn't be as qualified a judgment as that of a maintenance officer.

Q. Nevertheless, he would have some judgment, would he not? A. That is true, but—

Q. Well,—

MR. GALIHER: Let him finish, please.

By MR. PETTIBONE:

Q. I am sorry. Finish. A. There are technicalities in a jet aircraft that, in regard to maintenance—for instance, the fluctuation of an oil pressure gauge might not mean anything to me. To a maintenance officer it might mean a source of trouble. The same way with a fluctuation, the way the fuel pressure at your inlet nozzle is fluctuating might mean more to him than it would perhaps to one of our junior officers. However, if the gear won't come down, well, certainly a junior officer can recognize that, as well as the maintenance officer. So there are refinements that the maintenance officer will pick up: the way the aircraft handles. Is it properly rigged? I am not as 250 qualified to tell that as a maintenance officer. He knows the procedures. Spends his life's work in that. And he is more capable of analyzing maintenance problems than the average pilot.

Q. All right. But, conversely, could not one also say that there are many basic types of possible malfunction of an aircraft which would be readily recognized by anyone who is a pilot, whether he is a maintenance officer or not? A. Yes. There are basic malfunctions that could be recognized.

MR. PETTIBONE: That is all, Your Honor.

MR. GALIHER: Your Honor, I have no further questions of Colonel Kilkowski.

THE COURT: Colonel, you may step down. But I believe that you should remain for the present.

THE WITNESS: Yes, Your Honor.

(The witness stepped down.)

THE COURT: At this time we will take a recess of five minutes.

(Thereupon, a recess was taken until 11:08 a.m.)

## AFTER RECESS

MR. GALIHER: Next, Your Honor, on behalf of the plaintiffs, I would like to offer into evidence deposition of Colonel Irvin E. Ebaugh, and, if Your Honor would not mind referring to it, there are several portions of his questions and answers that I would like to bring to  
251 Your Honor's attention at this time. I am offering the whole deposition.

THE COURT: I take it there is no objection?

MR. PETTIBONE: No objection, Your Honor.

THE COURT: Very well. Admitted.

(Deposition of Col. Irvin E. Ebaugh was marked Plaintiffs' Exhibit No. 9 and received in evidence.)

MR. GALIHER: Colonel Ebaugh testified that he was Lieutenant Colonel Irvin E. Ebaugh, State Military Reservation, Havre De Grace, Maryland; that his job, since 1955, was that of United States Property and Fiscal Officer for the State of Maryland with an office located at the State Military Reservation at Havre De Grace.

Next, he was asked about his duties, and he said:

I am charged with properly handling any federal money's appropriated to the State of Maryland or allotted to the State of Maryland for the support of the National Guard, to maintain all accountable records for federal property that is sent to the state for use by the National Guard.

He said that the records, the handling of them, have been delegated to his assistant, who was located at the  
Air National Guard base.

252 He also stated that he processed permanent duty technician pay rolls and maintained the records for those pay rolls at that time.

Also, he stated that he had occasion to forward papers pertaining to air technician employees, civilian employees of the Maryland Air National Guard through his office to other agencies or departments of the Government.

Then he was asked specifically concerning the compensation claim of Captain McCoy as a result of this accident.

MR. PETTIBONE: Excuse me, Mr. Galiher. Would you please refer to page numbers?

MR. GALIHER: Page 17 is where that is referred to now, Mr. Pettibone.

MR. PETTIBONE: Thank you.

MR. GALIHER: And he is asked:

"Do you recollect that you ever processed any such papers through your office pertaining to one Captain Julius R. McCoy, of the 104th Fighter Interceptor Squadron of the Maryland Air National Guard?"

He answered: "Definitely, yes."

Next question:

"Do you remember particularly what those papers or documents were relating to Captain McCoy which you processed through your office to the Bureau of Employees Compensation?"

"Answer: This was, of course, the papers that are needed by the Bureau of Employees Compensation in support of any claims in payment of hospitalization that might arise out of an injury."

Next, he refers to the forms, which have already been identified by both Captain McCoy and Colonel Kilkowski, so I will not read that.

Then he is asked:

"Where these special forms pertaining to this particular accident of Captain McCoy's, or are they forms of a general nature used in all cases?"

And he answered:

"They were forms of a general nature used in all instances for technicians."

Then he is asked where they come from. And he says:

"They are provided from normal government channels, the same as you get other forms from the Department of Labor."



Then he brings out that the forms had been filled out, the forms previously identified, and sent to him by Colonel Kilkowski, the commander, as Your Honor has heard from the testimony. Then, he forwarded these forms, with other material that you will see reference to in a minute, 254 to the Department of Labor.

I would like at this time to introduce into evidence—if I may have that?

Your Honor, I have five documents signed by Lt. Col. Ebaugh, photostatic copies of them, from the Bureau of Employees Compensation Commission, that I would like to have marked for identification at this time.

THE COURT: Very well.

THE DEPUTY CLERK: Plaintiffs' Exhibit 5-F, 5-G, 5-H, 5-I, and 5-J, for identification.

(Documents shown to Mr. Pettibone.)

MR. GALIHER: May I refer Your Honor, in case they object, to the bottom of page 34 and you will see full description of his status there.

Do you have any objection?

MR. PETTIBONE: I object to their being admitted in evidence.

MR. GALIHER: I offer them, Your Honor.

MR. PETTIBONE: Defendant objects to their admission in evidence.

THE COURT: What is the ground for your objection?

MR. PETTIBONE: If the Court please, these are documents which pertain to a proceeding of an administrative nature in the Bureau of Employees Compensation, the Department of Labor, with respect to a claim which was filed on 255 behalf of Captain McCoy as a result of the injuries which were sustained in this accident. If they serve any purpose at all in this proceeding, it would be to show the determination made by that agency administratively concerning the claim of Captain McCoy. That, in turn, would hinge upon his status at the time of the accident.

Without going into a lengthy discussion of the principles of administrative law which are involved, I merely refer to the case of Pearson against Williams, which I cited previously, a Supreme Court of the United States decision, 202 U. S. 281, which in turn has been followed by a number of other decisions in various other Federal courts, the effect of which is to indicate, state and hold that an administrative determination of this nature can have no binding effect, have no legal effect, upon the status of the individual.

I, therefore, take the position, since these records could only be offered for that purpose, since they cannot serve that purpose, they should not properly be introduced in evidence before this Court. They relate to an issue which is the issue before the Court and which must be determined by the Court from the evidence which has otherwise been here presented. All of the basic material otherwise, I believe, is in the course of being presented, if it has not already been. And these records pertain only to 256 administrative action taken by another department of the Government, which has no binding effect whatsoever and no legal status or standing under this line of decisions following Pearson against Williams in this case.

THE COURT: Mr. Galiher, where did you get these records?

MR. GALIHER: These are from the compensation file, which were identified and we were permitted to keep copies of it, Your Honor.

THE COURT: Admitted.

(Plaintiffs' Exhibits Nos. 5-F, 5-G, 5-H, 5-I, and 5-J for identification were received in evidence.)

MR. GALIHER: The question on page 20:

Your certificate states that he was a civil employee of the United States at the time of injury and not a member of the Maryland Air National Guard. What was the basis of the information for making this certificate?

This is the one referred to at that point. May I hand it up to Your Honor?

And he goes on—

THE COURT: "G," I believe, or is that "J"? Which is this?

MR. GALIHER: "G," Your Honor.

257 THE COURT: Very well.

MR. GALIHER: And at the bottom of page 20, in explaining that, he said:

"Captain McCoy, as his duties, as a permanent air technician, is actually a civilian employee and, as such, is not a member of the Guard during the normal 40-hour week he is expected to work."

Then, on page 22, he indicates that he followed the normal and customary procedure.

Page 24, he is asked:

"How long had you known Captain McCoy?"

And he answers:

"I had known of Captain McCoy since he had been employed as a technician. Personally, I did not know him too well.

"Question: You were acquainted with his duties?

"Answer: I knew he had been hired as a technician at the Air National Guard. I didn't have full and complete knowledge of his duties. This is beyond the scope of my responsibilities, to have such knowledge.

"Question: These forms that you filled out in this case were similar to other forms that you used in connection with other compensation cases at your base?

"Answer: That is right. They are. We use them for Army technicians and air technicians, the full-time  
258 technicians, both Army and Air.

"Question. And your investigation led you to believe that you were justified in filling them out the way you did?

"Answer: Yes, definitely."

I would like to hand Your Honor, at this time, 5-F.

Page 26:

"What was your title in May of 1958, Colonel?

"Answer: As the United States Property and Fiscal Officer for Maryland.

"Question: And you held a commission from whom?

"Answer: I am actually on active duty. I was called to active duty by the Department of the Army.

"Question: And you were at that time?

"Answer: Yes."

Then:

"What were your duties as far as the 104th Squadron at Martin Field was concerned?

"Answer: My interest in the 104th Squadron, Fighter Squadron, is to see that they are properly supported equipmentwise and that funds that are given to the State of Maryland for the operations, to support the operations, were handled promptly.

"Question: You mean funds from the United  
259 States Government?

"Answer: Federal funds."

On page 27, he mentions the name of his assistant, Major James I. Considine, who was located at Martin Field.

Suppose I read this question:

"Was he a major of the United States Air Force at that time? We are inquiring into May 20, 1958.

"Answer: National Guard. He was a National Guard officer. As a technician, he enjoyed the same position as Colonel Kilkowski, Captain McCoy, the balance of the permanent-duty technicians employed there.

"Question: That was what again, please?

"Answer: Base Supply Officer.

"Question: Of the United States Air Force?

"Answer: He was the Base Supply Officer of the 104th Fighter Squadron at that time. That was the title he had.

"Question: Did he have a commission in the United States Air Force at that time?

"Answer: In the National Guard.

"Question: In the National Guard?

"Answer: In the National Guard, State of Maryland, the Air Force. He was commissioned in the Air Force of the State of Maryland."

260 MR. PETTIBONE: If the Court please, due to the fact this whole deposition has been introduced into evidence, it would seem to me that reading selective portions of it in this manner at this time amounts in effect to a presentation of some kind of legal argument. I do not believe this is the proper time.

THE COURT: It is not at all unusual, in cases where there is a deposition, for a person to summarize it. But I always have the whole thing read, if anybody objects.

Do you object?

MR. PETTIBONE: If I understand correctly, from what the Court said, then the Court will ultimately read the whole deposition, I take it, since it has been introduced in evidence. In that case, I guess I won't object.

THE COURT: The deposition was offered and no objection was made to the offer of the deposition itself, so it was received. Now, Mr. Galiher has called attention to parts of it that he specially relies upon. You may call attention to any other part that is in here that you wish.

MR. PETTIBONE: All right. That is satisfactory. Thank you, Your Honor.

MR. GALIHER: On page 34:

"Question: Colonel Ebaugh, was it a part of your duties as U.S. Property and Fiscal Officer to certify Julius R. McCoy as the civil employee qualified to apply for  
261 compensation?

"Answer: That is true, yes, and for any other technicians on our pay roll."



And then I have called Your Honor's attention to the material at the bottom of page 34, where he was asked as to his immediate supervisor and he said:

"I am assigned to the Chief of the National Guard Bureau here in Washington.

"Question: Who is your immediate superior there?

"Answer: It would be the Chief of the National Guard Bureau, General McGowan.

"Question: How about General Wilson?" And that is the General Wilson whose testimony is already before you in deposition form, Your Honor.

"Answer: General Wilson is the Chief of the Air Division. In this respect you might say I am wearing two hats, because I am working for the Air and the Army National Guard.

"Question: That is a federal agency?

"Answer: That is right.

"Question: You are not a member of the Maryland National Guard?

"Answer: No, I am not. I am a member of the Maryland National Guard on active duty. I have been called 262 to active duty in order to hold the position I have."

May I hand these back? They have already been introduced into evidence.

THE COURT: Have you finished reading everything you want to read in there?

MR. GALIHER: Yes, ma'am, I have.

THE COURT: Mr. Pettibone, if there is anything you want to mention that has not been covered, you may.

MR. PETTIBONE: Thank you, Your Honor. I would like to ask the Court to turn to page 24 of this deposition of Colonel Ebaugh. I invite the Court's attention particularly to the following questions and answers:

"Question: Did you personally talk with Julius R. McCoy before you forwarded these forms by this letter of transmittal with this certificate?

"Answer: No, I did not.

"Question: Had you personally talked with Colonel Kilkowski, the detachment commander, before you forwarded this letter of transmittal with the certificate?

"Answer: No, I did not.

"Question: Had you personally investigated the accident in which Captain McCoy was involved on May 20th before you forwarded the letter of transmittal and the certificate?

263 "Answer: No, I had no part in the investigation nor did I make any of my own."

That is all, Your Honor.

MR. GALIHER: Next, Your Honor, I would like to offer into evidence the testimony offered in deposition of Major Milton D. Britton.

And instead of trying to read from that, may I ask Your Honor to glance at it at this time, if you please,

THE DEPUTY CLERK: Plaintiffs' Exhibit 10.

MR. PETTIBONE: No objection, Your Honor.

THE COURT: Very well. It is admitted.

(Deposition of Major Milton D. Britton was marked Plaintiffs' Exhibit No. 10 and received in evidence.)

THE COURT: Mr. Galiher, a day or so ago you said you had certain depositions that you were offering. You did not list them, however. They were handed to the clerk and she marked them filed. But I wonder if they have been identified anywhere in the record. There are quite a few depositions here, and I want to be sure what you have in and what is not in.

Colonel Kilkowski testified. So you did not offer his deposition, I take it.

MR. GALIHER: I did not. But I understand Mr. Pettibone wanted to enter into a stipulation, and we did  
264 enter into a stipulation, as you will see in the pretrial order, which provides that the depositions of General Wilson, Captain McCoy, Colonel Kilkowski, Colonel Ebaugh,

Major Britton, and I believe Major Scott, might be offered into evidence and that if it was desired to offer the oral testimony of any of those witnesses, which we have done—I understand he is not going to—that would be all right, but still, Your Honor can use the depositions, as can counsel, for any purpose that they may see fit.

MR. PETTIBONE: That is correct. That was the agreement made at the time of the pretrial conference, Your Honor.

MR. GALIHER: Therefore, I think we both jointly ask that these various depositions be received into evidence, if they have not been formally introduced prior to this.

THE COURT: I thought that ought to be clear. Then the depositions of Captain McCoy, Colonel Kilkowski, Major Scott and Colonel Ebaugh are admitted.

What about these depositions of Charles A. Laymon, Charles A. Floyd, Lawrence M. Scott, and Richard S. Ackerman?

MR. GALIHER: They have nothing to do with the issue presently before the Court. They go into the liability phase of the matter, Your Honor.

I won't think any of the material in there would be  
265 in any way helpful to Your Honor in passing on this  
issue, whether he was an employee of the United  
States.

THE COURT: We mentioned, was it General Wilson?

MR. GALIHER: Yes, ma'am.

THE COURT: That is admitted.

All right. Then I believe that clarifies it.

MR. PETTIBONE: Could we ask the reporter just to read those names over once more so we can check them off our list here?

THE COURT: Certainly.

(The following was read by the reporter:)

"... which provides that the depositions of General Wilson, Captain McCoy, Colonel Kilkowski, Colonel Ebaugh,

Major Britton, and I believe Major Scott, might be offered into evidence."

THE COURT: Then they are all admitted.

MR. PETTIBONE: That is our understanding, Your Honor.

(Depositions of General W. P. Wilson, Captain J. R. McCoy, Major John Scott, Col. V. F. Kilkowski were marked Plaintiffs' Exhibits Nos. 11, 12, 13, and 14, respectively, and received in evidence.)

266 THE COURT: I have finished looking at this deposition of Major Britton.

MR. GALIHER: Next, may it please Your Honor, I would like to have marked for identification NGR Regulation 75-16, National Guard Regulations, also captioned Department of the Army, Washington, D. C., December 1947, Accounting Clerks and Caretakers.

THE DEPUTY CLERK: Plaintiffs' Exhibit 15 marked for identification.

(National Guard Regulations No. 75-16, Accounting Clerks and Caretakers, was marked Plaintiffs' Exhibit No. 15 for identification.)

(The exhibit was shown to Mr. Pettibone.)

MR. GALIHER: Your Honor, counsel is going to object to this and I would like to point out my reason for making the offer of this regulation. The cases which have been cited—

THE COURT: You mentioned two things. Which are you talking about now?

MR. GALIHER: I am talking about 75-16, Plaintiffs' for identification No. 15, National Guard Regulations, Department of the Army, Accounting Clerks and Caretakers, it is captioned.

This particular regulation was not in effect at the time of this accident.

267 THE COURT: You mean it was in effect before or after?

MR. GALIHER: This regulation was in effect at the time of the first case on the subject, having to do with caretakers, which was cited to Your Honor at the outset of this case by me. That was the Holly case, *United States vs. Holly*. The language contained in this regulation, which is a National Guard regulation, Department of the Army regulation, is referred to in the Holly case, both in the body of the case—that is 192 F.2d 221—and in the footnotes.

I want to also offer to Your Honor the Air National Guard Regulation 75-16, parts of it rather, and parts of Air National Guard Regulation 40-01, which were actually in effect at the time of the accident.

The case of *United States vs. Wendt*, W-e-n-d-t, also previously cited to Your Honor, and likewise dealing with caretakers, found in 242 F.2d 854, again refers to caretakers, and that case was decided under the regulations which were in effect at the time of this accident. And I think Your Honor should have them both before you so that you can see the attempt on the part of the National Guard Bureau, the Air Force and the Department of the Army to avoid the implications of the case of *United States vs. Holly*. And you will see in the *Wendt* case that they analyze the regulation which was actually in effect at the time of our 268 accident, and say it is exactly the same situation, that of a technician and that of a caretaker.

And therefore, because counsel would argue to you that the regulations were changed following the Holly case, I think Your Honor, for your guidance and help, should have before you actually the regulations which were in effect—at least the part of the regulations that I want to offer—in connection with the Holly case which does not appear from the case, and likewise the regulation which was in effect showing the change at the time of our accident and which was passed upon in the case of *United States vs. Wendt*. That is my sole purpose. And I submit it is a very proper purpose. And with that limited reason, I make the tender of that earlier regulation.



THE COURT: Do you want to be heard, Mr. Pettibone, on this?

MR. PETTIBONE: Well, in view of the explanation made by plaintiffs' counsel, these regulations were not in effect at the time of the accident, as long as that is understood, I won't object to their being introduced for the other reasons which he stated. If it will be helpful to clarify in any way these prior decisions, I won't object.

THE COURT: He did not say that all of these regulations were not in effect. He said that one was not in effect, if I understood him correctly, I understood him to say  
269 that 75-15 was not in effect.

MR. GALIHER: No. 75-16 was in effect and is referred to. But I want to show you the change with respect to caretaker.

THE COURT: Yes, I know. What I understood you to say was that the regulation that was not in effect was 75-15.

MR. GALIHER: No, ma'am. I have referred to the same one throughout, 75-16, and then I referred also to another regulation, 40-01.

THE COURT: I understood you to say that the ones that were in effect were 75-16 and 40-01 at the time of the accident which is involved here.

MR. GALIHER: That is right.

THE COURT: Then you said that one was in effect at the time of the Holly decision which was not in effect at the time of this particular occurrence involved here. That regulation was, I thought you said, 15. What did you say?

MR. GALIHER: What I said, Judge Matthews, was: It likewise carried the same number at the time of the Holly case, 75-16, but the language, as you will see, was changed after the Holly case.

THE COURT: I see. Then what you are saying is that the 75-16, or the 16 rather, that was in effect at the  
270 time of the Holly case, was amended or changed by the time of this occurrence, so that 16 now, the one that was in effect at the time of the accident, is different

from the 16 that was in effect at the time of the Holly decision.

MR. GALIHER: I say the language is different, as I will show you, but the application of the law to the language is exactly the same.

THE COURT: Yes. From what I understood Mr. Pettibone to say, he was, I thought, intimating that none of these regulations referred to were in effect at the time of this particular occurrence. That is what I was trying to get straight.

MR. PETTIBONE: That was due to the fact that the one that Mr. Galiher showed me was one which was not in effect at the time of the accident.

May I see the other one involved here?

THE COURT: Yes, certainly.

MR. GALIHER: I intended to have these marked and shown to him next. May I now do that, Your Honor?

THE COURT: Yes. Maybe we will get it straight.

THE DEPUTY CLERK: Plaintiffs' No. 16 for identification. And Plaintiffs' 17 for identification.

(National Guard Regulation 75-16, Field Civilian Personnel, and ANGR 40-01, Civilian Personnel, were marked Plaintiffs' Exhibits Nos. 16 and 17 for identification respectively.)

271 (The exhibits were shown to Mr. Pettibone.)

MR. GALIHER: Your Honor, just with the thought that perhaps on those two cases I did not indicate they were Federal Second, may I call those to Your Honor's attention, please?

THE COURT: Yes, certainly.

Mr. Galiher, are you concluding at the end of this?

MR. GALIHER: Yes, I am. I have one or two more things to introduce: documents, and a section of the Maryland Code which I would like to call to Your Honor's attention.

MR. PETTIBONE: I may explain our delay, Your Honor, is due to the fact that these regulations keep being changed

and superseded, so it is difficult to check any given one out.

THE COURT: I was wondering if we couldn't pass over that and you could finish with your other matters maybe. You have had a witness here since this morning.

MR. PETTIBONE: That is true, Your Honor.

THE COURT: There is to be a meeting of the Judges, I believe, at one o'clock, and the recess may be a little longer than it usually is.

MR. PETTIBONE: That would give us still more  
272 time, then, to straighten these things out. We will have the same problem, incidentally, for the defendant, because we have some regulations also which we wish to offer. So, during that period of time, perhaps counsel for both sides can work out the problems that relate to it so we will be ready to proceed with dispatch then.

THE COURT: Very well.

MR. GALIHER: May I then introduce into evidence and call Your Honor's attention to the Annotated Code of Maryland, Article 1(a), Section 10, dealing with collision of aircraft, which reads:

The liability of the owner of one aircraft to the owner of another aircraft, or to airmen or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land.

Thank you.

Subject to the documentary, that completes our case, may it please the Court.

THE COURT: Would you like to go on with your witness?

MR. PETTIBONE: Yes, Your Honor. I think we can do this rather quickly.

Mr. Stasko.

273 Thereupon

**John James Stasko**

called as a witness by the defendant, being first duly sworn,  
was examined and testified as follows:

**Direct Examination**

**By MR. PETTIBONE:**

Q. Will you state your full name, Mr. Stasko. A. John James Stasko.

Q. Where do you reside? A. 3002 Bryan Street, Alexandria, Virginia.

THE COURT: Will you spell your last name.

THE WITNESS: S-t-a-s-k-o.

**By MR. PETTIBONE:**

Q. Where are you employed? A. Bureau of Employees Compensation, Department of Labor.

Q. Is that the United States Department of Labor? A. Yes, sir.

Q. Where do you work, physically? A. At the present time, I am employed as a management analyst.

Q. Were you employed by the Department of Labor on May 20, 1958? A. Yes, sir.

Q. Have you been so employed at all times since 274 then? A. Yes, sir.

Q. What were your duties on May 20, 1958? A. I was an acting claims examiner supervisor.

Q. What specific part of the United States Department of Labor did you work in? A. Within the Bureau of Employees Compensation, which administers the Federal Employees Compensation Act.

Q. What was your job title at that time, in 1958? A. Acting claims examiner supervisor.

Q. What were your duties in that position? A. Well, the function of a claims examiner supervisor is to oversee the adjudication of claims arising out of Federal Employees

Compensation Act; particular duties at that time were to see that all the adjudicators or claims examiners carried out their normal day's work. In addition to that, train any new employees that we may have employed.

Q. In the course of that work, would you handle claims which arose from members of the Air National Guard of the United States? A. Yes, sir.

Q. What was your procedure? A. Pardon me, sir?

Q. What was your procedure for handling claims that came in from members of the Air National Guard of the United States? What was the procedure that you  
275 followed in this office for handling such claims, in other words? A. Air National Guard cases are handled in the same manner as any other case. Under the Federal Employees Compensation Act we cover a multitude of occupational occupations, period. For example, office workers, professional employees of the United States Government, and Air National Guardsmen.

Specifically, we require basic reporting forms which the Bureau has prescribed and has printed up for distribution to all agencies of the Government. When these basic forms come in, we review the form to see that they are properly completed, and we proceed to adjudicate the claim for compensation under the Federal Employees Compensation Act.

Q. What are the basic forms that you refer to? Can you describe them? Do they have numbers, or anything like that? A. Particular forms?

Q. Yes. A. Yes, sir, the basic reporting forms, the injured employee himself, is form CA-1. And then, after the employee completes this, he submits this to his supervisor who in turn completes form CA-2, which is Official Superior's Report of Injury. Then, in addition to that, you  
276 may have other forms: CA-16, which provides medical treatment, due to the injury.

Q. Who fills out that form? A. That is the immediate supervisor or superior of the injured employee.

Q. Are there any other forms which are used in connection with National Guard claimants? A. Forms them-



selves, no. But the Bureau does require certification by the proper official as to the individual's employment at the time of injury.

Q. In the case of a claim coming from an employee of a National Guard unit, who will execute such a certificate? Is there any designated official to execute such a certificate in the normal case? A. Yes, sir. The Bureau requires that the United States Property and Disbursing Officer is the one accountable for these injury reports. In other words, we do not as a general rule buy any certification by any other officer or individual within the National Guard.

Q. Then, if I understand you, the forms are CA-1, CA-2, CA-16 and this certificate of the Property and Disbursing Officer—or would that be Property and Fiscal Officer? A. The title that we have accepted is United States Property and Disbursing Officer.

Q. If you were to receive those forms in a claim arising from an employee of the National Guard in one of the various states, what would be your normal action then with respect to it? How would you proceed, in other words? What is your procedure? A. Well, we had explained that before. Review the basic reporting forms as to (1) properly completed; (2), are all—In other words, the form itself is printed in such a manner that answers reflect whether or not the individual is entitled to benefits under the Federal Employees Compensation Act. In review process, or adjudication, we accept certain answers as being factual, as reported by the officer in charge of the injured employee. And we, in the adjudication process, determine whether or not the individual is entitled to benefits under Federal Employees Compensation Act.

Q. Do you utilize these forms in making that adjudication? A. Pardon me, sir?

Q. I say, do you actually utilize these particular form in making that— A. Yes, sir. The answers given are very important as to whether or not the individual has coverage or does not.

MR. PETTIBONE: I would like to take one document from the group of documents which has already previously been marked Plaintiff's Exhibit 5. So may I ask the clerk  
278 to withdraw this particular document from that group of documents.

THE DEPUTY CLERK: Defendant's Exhibit 6 for identification.

(Department of Labor, Bureau of Employees' Compensation Form CA-25 was marked Defendant's Exhibit No. 6 for identification.)

By MR. PETTIBONE:

Q. Mr. Stasko, I am going to hand you a document which has just been marked Defendant's Exhibit No. 6 for identification. Will you look at it and state what it is, if you know. A. This is a form, CA-25, we call summary sheet. Its purpose is to record all case action within a specific case file. Its origin—in fact it is made up at the time the basic reporting forms are, and it goes along with the case file to the claims examiner for proper action.

Q. Is that a copy of the form CA-25 which relates to a specific case which you handled in your office in 1958, if you know? A. Yes, sir.

Q. Whose case does that refer to? A. Julius R. McCoy.

Q. Did you have any personal connection with the  
279 handling of the case of Julius R. McCoy? A. Yes, sir. At this time I was acting claims supervisor—claims examiner supervisor.

Q. Did you, in the course of your employment as acting claims supervisor, review the claim of Julius R. McCoy? A. Yes, sir.

Q. Did you make any entries on the CA Form 25, a copy of which you have just identified as holding in your hand? A. Did I do what, sir?

Q. Did you make any entries on that? A. Yes, sir. My initials are in the examiner's section.

Q. Will you point out where your initials are on this form, and describe it so it will go into the record. Where on that form do you find those? A. Mine are the first set of initials, which is a small "j" and a small "s," made for expediency.

Q. And whereabouts on the sheet are these found? A. Under the heading entitled "Examiner's Findings," item number one, "Claim approved." Underneath that is "Examiner."

Q. There appear to be some other initials following your own on that line. Do you know whose initials those are? A. Yes, sir. They are Mr. Diggins, John Diggins.

Q. Who was he? A. Mr. Diggins was a trainee at the time of the accident.

Q. Could you explain what you mean by "trainee"? A. A trainee is a new employee that is hired. After passage of examination, the Federal Government hires the individual and assigns him to the agency in need of this particular type of individual's talent. Mr. Diggins came aboard. I think he was aboard approximately a month or two. And in the process of his duties he was assigned primary cases to examine. At the completion of his examination he would submit these to a supervisor for a review and discussion as to points of workmen's compensation, principles he must be familiar with in adjudicating claims.

Q. Who was his supervisor? A. I was, sir.

Q. Did you supervise or review the work which he did in connection with this particular claim of Julius R. McCoy?

A. Yes, sir. This is signified by my initials right beside his, would indicate his supervisor had reviewed his work.

Q. With respect to this claim of Julius R. McCoy, did you take any specific action? A. Other than examining the basic forms, no, sir.

Q. Well, what final action did you take in the matter? First of all, let me ask you: Do you take final action in the matter? A. Adjudication of claims, final

action could be a misnomer in itself, towards the various steps of adjudication and administrative process we go through. But in this particular case, I would say final action was taken, yes, sir.

Q. Did you adjudicate the claim, in other words? A. Yes, sir.

Q. And what adjudication did you make of the claim? A. The actual adjudication was to review the basic reporting forms, CA-1, -2, and to agree that the individual injured, Mr. McCoy, was in the performance of duty at the time of injury.

Q. In reaching that conclusion did you consider any evidence of any kind, either verbal, by witness, or in documentary form, of other than these forms which you have enumerated? A. No, sir.

Q. So that your determination was based solely on those particular forms? A. It has to be. That is a requirement of the Bureau. Strictly on the case file record.

Q. As a result of your adjudication, you know 282 whether or not any payments were made to Julius

R. McCoy? A. No compensation payments were awarded. But there were medical payments. In other words, payment of medical bills incurred as a result of the accident. No compensation was paid.

Q. Does the document which you hold indicate what those payments were? A. Yes, sir.

Q. Would you so state, then, to the Court. A. There was a payment of \$50. to a Dr. R. H. Pilgram, P-i-l-g-r-a-m. There was a second payment, \$37.50, to the Frederick Memorial Hospital. Those are the only two payments made in this case.

Q. Was there any hearing held in conjunction with the adjudication of this claim? A. No, sir.

Q. Were any witnesses called? A. No, sir.

MR. PETTIBONE: No further questions, Your Honor.

MR. GALIHER: No questions, Your Honor.

THE COURT: Then I take it that it is agreeable to both sides for this witness to be finally excused?

MR. PETTIBONE: It is, Your Honor.

THE COURT: You are excused.

283 THE WITNESS: Thank you, ma'am.

(Witness stepped down.)

MR. PETTIBONE: That will complete the defendant's case, except for the introduction of these various regulations which we have talked about previously. In addition to those which the plaintiff still has pending to offer, we also have some. So, if the Court cares to recess at this time and convene later, we will undertake to work out the details of those documents to present at some later time.

THE COURT: Very well. Then we will recess until about 1:45.

MR. GALIHER: May Colonel Kilkowski be excused?

MR. PETTIBONE: I will not need him further.

THE COURT: You are excused, Colonel.

(Thereupon, at 12:16 p.m., a recess was taken.)

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#### AFTERNOON SESSION

MR. GALIHER: May it please the Court; I would like to introduce parts of Exhibit 15.

THE COURT: Would you speak just a little louder. This air conditioner drowns your voice out.

MR. GALIHER: I would like to introduce at this time a portion of Plaintiffs' Exhibit No. 15, marked for identification No. 15, which is what I referred to before the  
284 luncheon recess as being a National Guard regulation and Department of the Army regulation dealing with accounting clerks and caretakers which was in effect at the time of the case of Holly versus United States.

THE COURT: You said you were offering a part of it?



MR. GALIHER: Yes; I will read it to you, if I may. It is only a short part, right on the first page, Your Honor.

THE COURT: Very well. Admitted.

(Plaintiffs' Exhibit No. 15 for identification was received in evidence.)

THE COURT: You have examined this, Mr. Pettibone, have you not?

MR. PETTIBONE: Yes, we have, Your Honor.

MR. GALIHER: (Reading)

"Authority. Accounting clerks and caretakers referred to in these regulations are employees authorized under the provisions of section 90, National Defense Act, for the administration and care of materiel, armament, vehicles, and equipment provided for the National Guard and used solely for military purposes. The Secretary of the Army has delegated to the several adjutants general of  
285 States, Territories, and the District of Columbia, authority to employ, fix rates of pay, establish duties and work hours (not to exceed 40 hours per week), and to discharge employees within the purview of this regulation; subject to the provisions of law and such instructions as may from time to time be issued by the Chief, National Guard Bureau."

I would like to introduce this and ask Your Honor's permission to withdraw it so that I may make a photostatic copy of what I have just read to you, which I will then return to the Court. I understand this is the only document presently available.

THE COURT: All right.

MR. GALIHER: And I will also give Mr. Pettibone a copy.

THE COURT: Very well.

MR. GALIHER: And next, certain provisions of NGR 75-16, which I will call to Your Honor's attention—was marked for identification as No. 16, I think. This was after the one that I have just shown you. This was in effect when I think the case of Wendt, W-e-n-d-t, versus United

States was decided, which has already been mentioned to Your Honor.

"Purpose. The purpose of these regulations is to outline the qualifications, duties, rights and obligations of the following personnel (hereinafter referred to collectively as 'National Guard civilian personnel'); administrative assistants; accounting clerks, maintenance personnel; range-keepers; and administrative, supply and maintenance technicians, and to prescribe the procedure for the payment of these individuals.

"2. Authority. National Guard civilian personnel referred to in these regulations are employees authorized under the provisions of Section 90, National Defense Act, for administrative and accounting duties, maintenance, repair and inspection of materiel, armament, vehicles, and equipment provided for the National Guard and used solely for military purposes. The Secretary of the Army has delegated to the adjutants general of the several States, Territories, Puerto Rico, and the District of Columbia, the authority to employ, fix rates of pay, establish duties and work hours (a minimum of 40 hours per week), supervise, and discharge employees within the purview of these regulations; subject to the provisions of law and such instructions as may from time to time be issued by the Chief, National Guard Bureau. (32 U.S.C.A. 42 and 42a; . . .)"

The 42 is now 708, which has been introduced into evidence, the section dealing with caretakers and clerks, which I have already referred to and which I would like to refer to again when I make some closing remarks after all of the documents are in.

I think that all I will need to leave is just the first page of that, Your Honor, instead of all this other material, which I don't think you need.

And, finally, Your Honor, I would like to have marked—it has been marked No. 17 for identification. I wish to offer certain parts of it, which I will call to Your Honor's attention, just as I have done in the case of the other documents.

And I would likewise ask permission to withdraw that and have copies made of that.

THE COURT: Do I understand you are going to do each of these, 15, 16 and 17, the same way?

MR. GALIHER: Not 16.

THE COURT: All right.

MR. GALIHER: I take that back. I would like to do that the same way too, please.

Would Your Honor permit me to read from that, if you please?

THE COURT: Certainly.

MR. GALIHER: This is captioned Air National Guard Regulation, Department of the Air Force, Washington, 20 December 1945. ANGR 40-01.

Under "Purpose":

"This Regulation provides a manning guide for 288 the Air National Guard civilian personnel program and establishes policies and procedures applicable to Air National Guard civilian personnel.

"2. Policy: A. Air National Guard civilian personnel shall be utilized to effect maximum efficiency in administration, supply, operations, training, and maintenance of the Air National Guard.

"b. Air National Guard civilian personnel must be federally recognized members of the Air National Guard of the State, Territory, Puerto Rico, or the District of Columbia. . . .

"c. Officers will not be appointed to Air National Guard civilian personnel positions authorized for airmen, nor will airmen be appointed to positions authorized for officers.

"d. The authorized grade and position titles may not be altered or changed.

"f. Officer type air technician positions may not be transferred or changed without prior approval of the Chief, National Guard Bureau.

"g. Air National Guard technician positions will not be transferred to Army National Guard units.

"h. Air National Guard civilian personnel may not accept outside employment which interferes or conflicts with the performance of their Air National Guard civilian  
289 -duties.

"i. Air National Guard civilian personnel will occupy the T/O vacancy most comparable to their civilian position."

"k. Officers required to meet a Federal recognition board should not be employed prior to receipt of Federal recognition, and any individual if so employed accepts such employment at his own risk. Officers exempted from meeting a Federal recognition board may be employed and paid from the date the individual is appointed. Airmen may be employed upon completion of the oaths of enlistment.

"l. The authority governing matters pertaining to Air National Guard civilian personnel is contained in this regulation and will be quoted as reference in special orders and other official action."

#### Under "Authority:"

"a. Basic authority for the employment of Air National Guard civilian personnel is contained in Section 90, National Act, . . .

"b. Authority is delegated to the adjutants general of the several States, Territories, Puerto Rico, and the District of Columbia, to employ, fix rates of pay, establish work hours (a minimum of 40 hours per week), supervise, and discharge employees within the purview of this  
290 regulation; subject to the provisions of law and such instructions as may be subsequently issued by the Chief, National Guard Bureau."

There is next a regulation, Your Honor, which I am not offering but which I want to mention because if I don't

mention it, I am sure Mr. Pettibone will, and that says that "Air National Guard civilian personnel are considered to be employees of the State, Territory, Puerto Rico, or the District of Columbia."

The reason I do not offer that is because that is contrary to the evidence in this case and contrary to the uncontradicted decisions holding that unit caretakers and clerks in the category of Captain McCoy are employees of the United States.

THE COURT: You referred to this as a regulation but you have not identified it.

MR. GALIHER: This is simply another number in the document that I am reading from, called "4," under "Status," Your Honor.

I am not offering it. I say it is a self-serving statement of the Air National Guard concerning the status of Air National Guard civilian personnel and contrary to the uncontradicted law of the land, which I will refer to more in detail later on.

291 "5. For the purpose of this Regulation:

"'Air National Guard civilian personnel' means any and all civilians employed by the several States, Territories, Puerto Rico, and the District of Columbia, permanent or temporary, male or female, supported wholly or in part by Federal funds appropriated for that purpose, including but not limited to the following:"

And then they go along and say "Air Technician" and explain what that is; "Temporary employees"; "Temporary air technician." They explain next an "Air National Guard civilian detachment," what they mean by "Man days," "Man months," "Man years."

They have a section here dealing with "Air National Guard Civilian Man Months and Funds." They prescribe salary and wage schedules for the Air National Guard



civilian personnel as published by the Chief, National Guard Bureau, and that is set out here in detail.

They have a section which covers Air National Guard civilian personnel attending service or technical schools. That is number 10, subsection (6).

They have a subsection (7), of the same Section No. 10, covering air technicians who cannot receive government mess and quarters while attending school. They are to be given certain cash sums prescribed, based on a day to day basis.

292. They deal with government transportation, reimbursable expenses, even taxi fares, government autos. Then they have a Section 11 providing that the pay of National Guard maintenance employees with less than journeyman skill—"NGM," I assume that is what it means—this provision:

"a. The Army-Air Force Wage Board locality pay scales used for air technicians are based upon the employee having 'journeyman' level of skill and ability. Therefore, employees with less than journeyman level of skill and ability are not entitled to the rates of pay listed in subject scales."

Section 12 provides for Social Security benefits for these civilian personnel, and this reads:

"Air National Guard civilian personnel are eligible to be covered by the provisions of the Social Security Act, as amended, unless such personnel are under an existing retirement system."

That is in line, I submit, with the testimony which has been offered into evidence.

The next section deals with—testimony about which there  
293.     pensation Commission. Permits compensation to be paid for injuries or death incurred by Air National Guard Civilian personnel in the performance of their official duties.

They have a provision applying to civilian personnel, which starts with Section Roman numeral IV, called "Step Advancement," and continues with several sections as to how advancement can take place in the job, how promotions can take place.

They have a section number 23 which provides that:

All personnel will attend field training in their military status. Personnel will not remain on duty at their home station unless specifically authorized by the Chief, National Guard Bureau.

They have Section 24, which provides for attendance at Military and/or Civilian Service or Technical Schools, providing that they will attend in their military status unless specifically authorized to attend in civilian status by the Chief, National Guard Bureau.

Section 25, I call to Your Honor's attention, dealing with the utilization of temporary air technicians:

"a." in part, reads:

"The use of temporary employees, paid from funds authorized for pay of air technicians, is not authorized without approval of the National Guard Bureau, . . ."  
and so forth.

294 Number 26 provides:

"Air National Guard Civilian Personnel Manning Guide. Attachment No. 1 to this Regulation is the Air National Guard Civilian Personnel Manning Guide. Employment of civilian personnel listed in this guide will be governed by directives promulgated from time to time by the Chief, National Guard Bureau."

This is already in evidence, Your Honor, as No. 3, and I have called Your Honor's attention to the pertinent parts of that.

I believe that covers the sections, Your Honor, that I wanted to call to Your Honor's attention.

Thank you.

MR. PETTIBONE: May I inquire: Are you offering the whole regulation?

MR. GALIHER: No. I am offering the regulations that I specifically said I was offering. Those are the ones that I have read to Your Honor, with the exception of Number 4, which I mentioned to Your Honor but stated specifically I was not offering it into evidence.

THE COURT: You said earlier that you were going to have a photostat or something to identify those?

MR. GALIHER: Yes, if I may, please.

THE COURT: All right.

MR. PETTIBONE: If the Court please, in view of  
295 the fact that the plaintiff has read or paraphrased at some length many portions of these regulations, I would now move that the entire regulation be introduced into evidence, rather than just those single portions which the plaintiff has selected.

MR. GALIHER: The part that I have indicated I object to is contrary to law, Your Honor. And, as I said, it was a self-serving document.

THE COURT: Well, you have offered what you want in. Now, if I understand his motion, it is that he wants all the rest of the regulations in.

MR. GALIHER: That is right.

THE COURT: You object to nothing that he wants in except this 4, is it?

MR. GALIHER: Well, there are several others, if he is going to offer them all, that I object to. I will be glad to point them out, Your Honor.

The first one I told you about I have objected to is number 4, and I suppose, to pass on it, Your Honor would like to read it. I have stated my reasons for that, being contrary to the law in the case of *Holly vs. United States*, *Elmo vs. United States*, *Duncan vs. United States*, *Courtney vs. United States*, and *Wendt vs. United States*, the citations of which I have given to you.

THE COURT: What are the others which you have  
296 objected to, if any?

MR. GALIHER: All right. I wonder if I might have that back? I am sorry we don't have more copies.

THE COURT: I have overruled your objection before, which means that 4 is received as evidence offered by the defendant.

MR. GALIHER: I don't believe I have any other objections, Your Honor.

THE COURT: Very well. Then the rest of that document, Plaintiff's 17, will be received on behalf of the defendant.

COLONEL PRINCE: Your Honor, I have eight regulations here I would like to have marked for identification at this stage.

THE DEPUTY CLERK: Defendant's Exhibit No. 7 for identification.

(Air Force Regulation 45-2 was marked Defendant's Exhibit No. 7 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit No. 8 for identification.

(Air Force Regulation 20-12 was marked Defendant's Exhibit No. 8 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit 9 for  
297 identification.

(Air National Guard Regulation No. 50-01 was marked Defendant's Exhibit No. 9 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit 10 for identification.

(Air National Guard Regulation No. 55-19 was marked Defendant's Exhibit No. 10 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit 11 for identification.

(Air Force Regulation No. 123-5 was marked Defendant's Exhibit No. 11 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit 12 for identification.

(Air National Guard Regulation No. 36-05 was marked Defendant's Exhibit No. 12 for identification.)

THE DEPUTY CLERK: Defendant's Exhibit 13 for identification.

(Air National Guard Regulation No. 36-4 was marked Defendant's Exhibit No. 13 for identification.)

THE DEPUTY CLERK: And Defendant's Exhibit 14  
298 for identification.

(Air National Guard Regulation No. 36-02 was marked Defendant's Exhibit No. 14 for identification.)

THE COURT: The Government didn't give any number to the balance of this 17. I guess that should have a number.

COLONEL PRINCE: Why don't we, then, Your Honor, number that Defendant's Exhibit 15.

THE COURT: And Defendant's 15 will be so much of Plaintiff's 17 as was not introduced by the plaintiff.

(Air National Guard Regulation No. 40-01 was marked Defendant's Exhibit No. 15 for identification.)

MR. PETTIBONE: Thank you, Your Honor.

COLONEL PRINCE: At this point, the defendant offers into evidence Defendant's Exhibit 7 for identification, which is a copy of Air Force Regulation 45-2, dated 13 April 1949. Copies of this particular document have previously been furnished to counsel for the plaintiff.

MR. GALIHER: We have no objection to this document, Your Honor.

THE COURT: Very well. Admitted.

(Defendant's Exhibit No. 7 for identification was received in evidence.)

299 COLONEL PRINCE: Defendant offers into evidence Defendant's Exhibit 8 for identification, a copy of



Air Force Regulation 20-12, dated 9 November 1953. Copies of this document have also been furnished to plaintiff.

MR. GALIHER: Your Honor, the only objection we have to this document is contained in Regulation number 5 b., which has to do with the same objection that I made to the other document, which is contrary to law.

THE COURT: Very well. I will overrule your objection. Defendant's 8 is admitted.

(Defendant's Exhibit No. 8 for identification was received in evidence.)

COLONEL PRINCE: Now, Your Honor, with regard to Defendant's Exhibits 9 through 14 for identification, we are embarrassed to find that we do not have such copies of these regulations at this point. And in the event that they are admitted, we would like permission to withdraw them and prepare copies and furnish counsel for the plaintiff with those.

THE COURT: Well, have you shown them to—

COLONEL PRINCE: No, we have not, Your Honor, I intend to do this right now.

THE COURT: Very well.

(Documents were handed to Mr. Galiher.)

300 MR. GALIHER: Your Honor, there are certain parts of this which we have no objection to, but there are several parts where this constitutes a legal argument just as would be in a brief. For example, "Except when ordered to active Federal service by competent authority, the Air National Guard is not legally under the command jurisdiction of officers of the United States Air Force; neither is the Air National Guard of a State legally subject to orders from an Air National Guard officer from another state."

Those are points Your Honor has to resolve. We object to their regulation so far as these legal arguments are contained therein, as well as, for example:

"The efficient and effective training of the Air National Guard while under State control requires the highest degree

of cooperation and coordination between all echelons of command regardless of State boundaries or other legal barriers, in order to properly train the Air National Guard for its Federal mission."

Obviously, material of that sort, Your Honor, is what we would certainly call in law dicta, which has nothing to do with regulations as such. So we certainly object to those.

THE COURT: Which one is that in? 9?

MR. GALIHER: This is in No. 9, 6c and d, I have 301 just read from.

THE COURT: I will take a look at it.

You go ahead, though, with anything else.

MR. GALIHER: Go ahead with the others, since they have just been handed to us, Your Honor.

THE COURT: You have finished with this?

MR. GALIHER: I think that is all. I have had to go through it very hurriedly.

Your Honor, it will take us five or ten minutes to look at this. I don't know whether they have any other documents. We have been handed some here. Would there be some other way of resolving this so we can save Your Honor's time?

THE COURT: You have other documents you are going to offer besides these they are looking at?

COLONEL PRINCE: No, we don't have any others, Your Honor.

MR. GALIHER: Then we will look at those now.

THE COURT: How long will it take you? About ten or fifteen minutes?

COLONEL PRINCE: I would say not longer than ten minutes, Your Honor.

THE COURT: All right. We will take a recess for ten minutes.

(Thereupon, at 2:29 p.m., a recess was taken.)

302

## AFTER RECESS

MR. GALIHER: We have no objection to the other documents, Your Honor. Some of them have underlining and so forth. I assume they don't mean to draw particular emphasis to that; particularly since they only had one document, we are making no objection—one copy.

THE COURT: You would like to withdraw this 6c and 6d, or do you stand on it?

COLONEL PRINCE: 6c and 6d, Your Honor?

THE COURT: That is Defendant's 9. That was that part that Mr. Galiher objected to.

COLONEL PRINCE: Did I understand Mr. Galiher—You are still maintaining your objection to this one?

MR. GALIHER: The part the Judge has before her.

THE COURT: Only to 6c and 6d in No. 9.

COLONEL PRINCE: Yes, Your Honor. Yes, if it please the Court, we intend to stand on our offer as to the entire regulation.

THE COURT: Well, I think I will admit the entire regulation. Of course, we all know that the Army or the Air Force is not a legislative body, and that it may make only such regulations as are authorized by law.

(Defendant's Exhibit No. 9 for identification was received in evidence.)

303 COLONEL PRINCE: Yes, ma'am.

I think maybe for the sake of the record, if it please the Court, at this time that I should make a formal offer of all of these Defendant's Exhibits, 9 through 14 for identification.

THE COURT: Yes. They are all admitted.

(Defendant's Exhibits Nos. 10 through 14 for identification were received in evidence.)

COLONEL PRINCE: Thank you, Your Honor.

THE COURT: And I did admit 15?

THE DEPUTY CLERK: Yes, Your Honor.

(Defendant's Exhibit No. 15 for identification was received in evidence.)

THE COURT: Is that all.

MR. PETTIBONE: That is all, Your Honor, for the defendant.

MR. GALIHER: That is all for the plaintiffs, Your Honor, except that if I may be permitted to make some observations at this time, which I think perhaps would be of help to Your Honor, I would appreciate the opportunity of doing so.

**Plaintiff's Exhibit 1, Local Flight Clearance**

AF FORM 113  
28 MAR 49



**Plaintiff's Exhibit 2. Flight Order Number 105**

OFFICE OF THE OPERATIONS OFFICER  
 104th Fighter Interceptor Squadron  
 Maryland Air National Guard  
 Baltimore, Maryland

20 May 1958  
 (Date)

FLIGHT ORDER)  
 NUMBER 105)

1. The fol CR/M this Hg, WP on/about 20 May 1958 in acft as indicated below from Martin Airport, Baltimore, Maryland, to destination specified below, CIPAP, for purpose of maintaining flying proficiency and upon comp of flt, will return to proper duty station on/about 20 May 1958.

A/C Type & No.	Grade	Name	AFSN	Destination	Duty
T-33A 5966	Capt.	J. R. McCoy	AO-784050	Local	P
T-33A 5024	Major Capt.	J. F. R. Scott T. L. Oelker	AO-528560 AO-827925	Cleveland Cleveland	IP P

BY ORDER OF THE COMMANDER:

Official:

JOSEPH J. MAISCH, JR.  
 Joseph J. Maisch, Jr.  
 MAJOR, Md. ANG  
 Operations Officer

JOSEPH J. MAISCH, JR.  
 MAJOR, Md. ANG  
 Operations Officer

**AIR NATIONAL GUARD MANUAL**

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**CIVILIAN PERSONNEL  
MANUAL**

1 MARCH 1958

DEPARTMENT OF THE AIR FORCE • NATIONAL GUARD BUREAU

## Foreword

The Air National Guard Civilian Personnel Manual is issued to provide staff and operating personnel with a convenient reference to the titles, grade, job number and duties of civilian personnel in the Air National Guard. Provisions are also included for the submission of recommendations for new or revised positions, grades and titles.

Provisions of this manual will govern all Air National Guard civilian employees, including those employed on a temporary hourly rate basis except those hired wholly from State or service contract funds, and will become effective as of 1 April 1958.

All Air National Guard civilian personnel will be permitted access to the contents of this manual and will be fully acquainted with the duties and responsibilities of their positions.

Recommendations or suggestions for the improvement of procedures or position descriptions of this manual are encouraged. Comments may be forwarded to National Guard Bureau, NG-AFOTF, Washington, D. C.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

**OFFICIAL:**

**JAMES E. BARBER**  
Colonel, NGB  
Executive

**EDGAR C. ERICKSON**  
Major General  
Chief, National Guard Bureau

**DISTRIBUTION:**

- 1 ea AG
- 1 ea DSP&FO
- 4 ea Flying Detach
- 1 ea Non-Flying Detach

1 March 1952

ANSM 43-81

The listing below is in numerical order according to job numbers. The status indicates the position can be occupied by Officer (O), Warrant Officer (WO)\*, Airman (A), Female (F), and Non-Guardsman (X). The job title and career field title indicate the technician job title and corresponding Air Force career field and title. These are the new position numbers and titles; for the conversion see Section II, Paragraph 32.

\* An airman who is appointed warrant officer may be retained in his airman type position. A warrant officer will not be hired direct into airman type positions except into the position of Aircraft Maintenance Chief, Job Number 43-10.

Job No.	Status	Job Title	Career Field and Title
00-00	O	Base Detachment Commander	00 Commanders
00-01	O	Base Detachment Commander	00 Commanders
00-02	O	Base Detachment Commander	00 Commanders
00-03	O	Training Site Supervisor	00 Commanders
00-04	O	Training Site Supervisor	00 Commanders
14-00	O	Operations Supervisor	14 Ops & Tag
14-01	O	Flying Training Instructor	14 Ops & Tag
23-00	O	Intelligence Photo Radar Supv	23 Photographic
23-10	A	Photo Technician	23 Photographic
23-11	A	Photo Tech and Repairman	23 Photographic
23-12	A	Photo Lab Technician	23 Photographic
23-13	A	Camera Repairman	23 Photographic
27-10	A	Air Operations Specialist	27 Air Traffic Cont & Wgt
27-11	A	Air Operations Technician	27 Air Traffic Cont & Wgt
30-00	O	Communications Supervisor	30 Comm & Electronics
30-01	O	Radar Station Commander	30 Comm & Electronics
30-02	O	Radar Station Commander	30 Comm & Electronics
30-03	O	Tactical Control Sq Commander	30 Comm & Electronics
30-04	O	Tactical Control Gp Commander	30 Comm & Electronics
30-05	O	Comm & Electronics Supervisor	30 Comm & Electronics
30-10	A	Radio-Radar Maint Supt. (Ground)	30 Radio-Radar Systems
30-11	A	Radar Maint Tech (Airborne)	30 Radio-Radar Systems
30-12	A	Radar Mechanic (Airborne)	30 Radio-Radar Systems
30-14	A	Radar Maint Technician (Gnd)	30 Radio-Radar Systems
30-15	A	Radar Mechanic (Ground)	30 Radio-Radar Systems
30-17	A	Radio Maint Tech (Airborne)	30 Radio-Radar Systems
30-18	A	Radio Mechanic (Airborne)	30 Radio-Radar Systems
30-20	A	Radio Maintenance Tech (Gnd)	30 Radio-Radar Systems
30-21	A	Radio Mechanic (Ground)	30 Radio-Radar Systems
30-23	A	Communications Technician	30 Radio-Radar Systems
32-10	A	Fire Control Superintendent	32 Fire Control Systems
32-11	A	Fire Control Technician	32 Fire Control Systems
32-12	A	Fire Control Specialist	32 Fire Control Systems
34-10	A	Flight Simulator Technician	34 Training Devices
34-11	A	Flight Simulator Specialist	34 Training Devices
34-12	A	Synthetic Trainer Technician	34 Training Devices
42-10	A	Hydraulic Technician	42 A/C Accessories Maint
42-11	A	Propeller Technician	42 A/C Accessories Maint
42-13	A	Instrument Technician	42 A/C Accessories Maint
42-14	A	Electronic Fuel Cont Tech	42 A/C Accessories Maint
42-15	A	Electrical Technician	42 A/C Accessories Maint
42-16	A	Electronic Fuel Cont. Specialist	42 A/C Accessories Maint
43-00	O	Maintenance Supervisor	43 Maint & Engineering

ANCM 48-81

1 March 1958

Job No.	Status	Job Title	Cover Field and Title
43-10	O-WO-A	Aircraft Maintenance Chief	43 Aircraft & Eng Maint
43-11	A	Chief Maintenance Inspector	43 Aircraft & Eng Maint
43-12	A	Maintenance Inspector	43 Aircraft & Eng Maint
43-13	A	Aircraft Maint Technician	43 Aircraft & Eng Maint
43-14	A	Senior Aircraft Mechanic	43 Aircraft & Eng Maint
43-15	A	Aircraft Mechanic	43 Aircraft & Eng Maint
43-16	A	Jet Eng Maint Supt	43 Aircraft & Eng Maint
43-17	A	Jet Engine Technician	43 Aircraft & Eng Maint
43-18	A	Jet Engine Mechanic	43 Aircraft & Eng Maint
43-19	A	A/C Dock Superintendent	43 Aircraft & Eng Maint
43-20	A	Flight Engineer Technician	43 Aircraft & Eng Maint
43-20	A	Production Scheduling Tech	43 Aircraft & Eng Maint
43-20	A	Munitions & Weapons Tech	45 Production Control
43-21	A	Munitions and Weapons Spec	46 Munitions & Wpns Maint
47-10	A	Motorized Equip Superintendent	46 Munitions & Wpns Maint
47-11	A	Mechanic (General)	47 Motorized & Misc Maint
47-12	A	Ground Pow & Support Equip Repair	47 Motorized & Misc Maint
47-13	A	Vehicle Operator (Mechanic)	47 Motorized & Misc Maint
53-10	A	Machinist	53 Metal Working
53-11	A	Sheet Metal Technician	53 Metal Working
53-12	A	Welder	53 Metal Working
55-00	O	Install Facilities Supt	55 Install Engineering
57-10	A	Crash/Fire Rescue Specialist	57 Firefighting
58-10	A	Parachute Rigger & Repairman	58 Fabric, Leather & Rubber
59-10	A	Boat Master	59 Marine
59-11	A	Marine Engineer	59 Marine
64-00	O	Supply Supervisor	64 Supply
64-01	O	Assistant Supply Supervisor	64 Supply
64-10	A	Editing & Doc Control Tech	64 Supply
64-11	A	Supply Records Specialist	64 Supply
64-12	A	Refueling Unit Operator	64 Supply
64-13	A	Warehouse Specialist	64 Supply
64-14	A	Warehouse Specialist (Apr)	64 Supply
64-15	A	Petroleum Specialist	64 Supply
64-16	A	Clerk Parts (Maintenance)	64 Supply
64-17	A	Purchasing & Contracting Spec	64 Supply
64-18	A	Warehouse Superintendent	64 Supply
64-19	A	Inventory and Inspc Spec	64 Supply
64-20	A	Supply Records Superintendent	64 Supply
64-21	A	Org Supply Superintendent	64 Supply
64-22	A	Org Supply Technician	64 Supply
64-23	A	Clerk Parts (Maintenance)	64 Supply
64-24	A	Org Supply Specialist	64 Supply
64-25	A	Transportation Specialist	64 Supply
64-26	A	Supply Specialist (Apr)	64 Supply
67-10	A	Accounting Specialist	67 Finance, Acctg & Auditing
67-11	A	Finance Specialist	67 Finance, Acctg & Auditing
68-00	O	Accounting Supervisor	68 Comptroller
68-01	O	Accounting Supervisor	68 Comptroller
68-02	O	Accounting Supervisor	68 Comptroller
70-01	O	Administrative Supervisor	70 Administration Services
70-02	O	Administrative Supervisor	70 Administration Services
70-03	O	Administrative Supervisor	70 Administration Services
70-04	O	Administrative Assistant (State)	70 Administration Services
70-05	O	Administrative Asst. (State)	70 Administration Services
70-06	O	Administrative Asst. (State)	70 Administration Services
70-11	A	Administrative Technician	70 Administration



1 March 1958

## Section I

## GENERAL PROVISIONS

## 1. Format

This manual is issued in loose-leaf form to facilitate reference and current maintenance. Changes to this manual will be effected by rescission, additions, and deletions of specific pages or of entire sections, based on the extent of change to be effected.

## 2. Maintenance of Manual

a. Copy or copies of this manual will be maintained by each office listed on the distribution. Any changes will be forwarded by numbered transmittal sheets and inserted in the appropriate space within the manual.

b. The following internal distribution is recommended:

(1) Each major functional area at a flying base should maintain a copy of the manual—supply, maintenance, operation and administration. The other functional areas will consult the administrative copy.

(2) Each non-flying detachment not located on or not fully dependent on a flying base should maintain a copy to include Headquarters State Air National Guard, electronics and communications units or detachments and other detachments that "need to know" may request copies from National Guard Bureau, AFOTP.

## 3. Delegation of Authority

The authority of the National Guard Bureau to regulate the employment and rates of compensation is contained in Department of the Army General Order 96, dated 9 November 1951, subject, "Delegation of Authority for the Employment and Fixing of Salaries for All Caretakers and Clerks in the National Guard Bureau."

## 4. Policy

a. It is the policy of the National Guard Bureau that positions will be classified in an orderly manner to provide a systematic basis for salary or wage determination, as well as for the application of the various processes of air technician personnel management and administration. This policy, applied within the framework of governing laws and regulation, will facilitate the equal treatment within each classification and pay category of employees performing comparable work.

b. In order that this policy may be made operative, it is necessary that pay rates bear a direct relationship to the level of responsibility and qualification required for the work performed. Through a process of job evaluation both National Guard Classified (NGC) and National Guard Maintenance (NGM) positions are graded to provide for the equitable application of the appropriate salary or wage schedules.

c. To provide for effective administration of the program, the classification structure will be maintained through periodic manpower management surveys and desk audits of positions.

## 5. Responsibility

a. Adjutants general of various States, Territories, Puerto Rico or the District of Columbia will be responsible for:

(1) Insuring that the requirements and policies of the Air National Guard position classification program are followed at all air technician detachments.

(2) Furnishing recommendations, suggestions, and information to the National Guard Bureau on matters pertaining to clas-

ANM 40-01  
Sec. I

1 March 1953

sification standards, or on policies, techniques, and procedures affecting the position classification program.

(3) Maintains contact with the Civilian Personnel Office at nearest military installation and assists him in gathering information necessary for proper adjustment of the locality pay schedule.

b. The base detachment commander or senior air technician will be responsible for:

(1) Implementing and maintaining the position classification program as a means to facilitate the personnel management process in the accomplishment of the air technician detachment mission.

(2) Furnishing the State adjutants general with information, suggestions, or recommendations pertinent to classification policies, techniques, and procedures affecting the position classification program.

(3) Promoting the position classification program and assuring its understanding and implementation by supervisors and all employees.

(4) Keep current on the standard pay rates in their locality and advise the adjutant general of material changes. Maintain close coordination with the Civilian Personnel Office at the nearest military installation.

## 6. Categories of Positions

There are two major categories of positions in the National Guard Air Technician Program which are the National Guard Classified (NGC) type and the National Guard Maintenance (NGM) type.

a. National Guard Classified Type Positions (NGC). This type of category is characterized by administration, clerical, certain supervisory and professional type positions. Numerical designations of the grade are the same as those in the General Schedule of Employees of the United States Civil Serv-

ice. The National Guard Bureau is guided by the Classification Act of 1949 and pay rates for this category are controlled by Congressional action.

b. National Guard Maintenance Type Positions (NGM). This type of category is characterized by trade, craft, maintenance, and labor type positions. These positions are similar to United States Civil Service Wage Board positions and pay rates are adjusted by periodic surveys conducted by the Army-Air Force Wage Board. The following pay rates are included in this category classification:

(1) *National Guard Maintenance (NGM)*. Technically skilled positions primarily concerned with the accomplishment of specific tasks and duties related to crafts, trades, maintenance of equipment and physical labor. The employees in these positions accomplish tasks and duties as directed by supervisory personnel.

(2) *National Guard Maintenance—Leader (NGM-L)*. Technically skilled positions in which the employees exercise responsibility for the work of the positions stated in (1) above, and participate in the accomplishment of assigned duties and tasks.

(3) *National Guard Maintenance—Supervisor (NGM-S)*. Technically skilled positions primarily concerned with direct supervision of the duties and tasks assigned to the employees in positions (1) and (2) above. Incumbents of these positions must be qualified to perform the work assigned to the employees under their supervision.

## 7. Use of Manual

A copy of this manual will be available for review and reference by supervisors and by employees. Ready access to the manual is essential for an understanding by Air National Guard civilian and military commanders of the responsibilities of Air National Guard civilian personnel.

1 March 1958

ANGM 40-01  
 Funct. Code: 80010  
 Status: Revised  
 Date: Sept 57

## MAINTENANCE SUPERVISOR

Grade: NGC-11  
 Job Number: 43-00

### I. NATURE AND PURPOSE OF WORK:

#### A. Introduction:

The position is located in the Maintenance Division of an Air Technician Detachment. The incumbent is responsible for coordination, supervision and control within the maintenance division for aircraft maintenance, (field and organizational type), electronics, motor vehicle and support equipment. Incumbent will maintain proper administrative practices when carrying out his responsibilities, using all accepted management principles.

#### B. Duties:

1. Supervises the Production Control Section to assure that all activities of maintenance are planned and coordinate properly. Arranges for work assignments and deadlines on priority jobs in coordination with production control.

2. Will supervise the Quality Control activity to assure that this section complies with all technical orders and similar directives on aircraft maintenance, inspections, and like activities.

3. Establishes, directs, and administers policies and procedures for all maintenance functions to include: electronics, electrical, hydraulics, machinist, welder, instruments, auxiliary hangar equipment, engine shop, motorized equipment, etc.

4. Advises or assists superintendents of the various maintenance areas in the more difficult technical problems involving supply, maintenance, repair, modification and storage. Recommends actions regarding requisitions and disposition of property.

5. May conduct a school or training

class for the purpose of training present or future superintendents in the technical administrative problems involving the various functions of management.

6. Is responsible for ground safety, fire and crash rescue as concerns the Maintenance Division.

7. Responsible for personnel practices in the Maintenance Division to include: approval of leave, recommends promotions, separations, transfers, disciplinary actions, interviews new employees, etc.

8. Responsible for obtaining bids for contractual maintenance services. Formulates instructions, specifications, and other material necessary to obtain bids. Decides what bid to accept and assures completeness of contract with coordination with the Base Supply Supervisor.

#### C. Responsibility for Work of Others:

1. The incumbent is directly responsible for the Aircraft Maintenance Chief, Communications and Electronics Supervisor, and Motorized Equipment Superintendent.

2. The total maintenance area is controlled and managed by the Maintenance Supervisor which involves a minimum of 30 Civilian Air Technician employees.

### II. SCOPE AND EFFECT OF WORK:

The incumbent is responsible for the efficient management of the maintenance shop, electronics, motor vehicles, and all allied activities. The degree of efficiency with which he operates will directly reflect in the over all operation of the Air National Guard.

ANGM 40-01  
Funct. Code: 80010  
Status: Revised  
Date: Sept 57

1 March 1958

### III. SUPERVISION AND GUIDANCE RECEIVED:

Under general supervision of the Base Detachment Commander. The incumbent develops his own work procedures, generally establishes priorities and is primarily responsible for operation of the Maintenance Division.

### IV. MENTAL DEMANDS:

Must be thoroughly familiar with all operations of the Maintenance Division to include all aircraft repair and maintenance, motorized equipment repair, ground safety, supply, etc. Must be able to advise or answer any technical question involving his division. Occasionally operates maintenance function under extensive heavy workload, which calls for organized planning and coordination within the section.

### V. PERSONAL WORK CONTACTS:

Contacts are with subordinate person-

nel Base Detachment Commander, Air Force Inspectors, and visiting personnel from the Air Force and the National Guard Bureau.

### VI. QUALIFICATIONS:

#### A. Mandatory:

1. Must possess six years overall experience in all phases of aircraft maintenance and repair of allied equipment.
2. Completion of an Air Force course in maintenance.
3. Must have management background, either military or civilian.

#### B. Desirable:

1. Completion of an Air Force maintenance management course.
2. Be a rated pilot on flying status to enable incumbent to make test flights on assigned aircraft.



1 March 1958

 ANGM 40-01  
 Funct. Code: 80010  
 Status: Revised  
 Date: Sept 57

## AIRCRAFT MAINTENANCE CHIEF

 Grade: NGMS-9  
 Job Number: 43-10

### I. GENERAL:

The position is located in the Aircraft Maintenance Section, Maintenance Division of an Air Technician Detachment. The incumbent is responsible for hangar and flight-line maintenance, inspections, and repair of all aircraft, jet or conventional, assigned and transient. Incumbent must be thoroughly familiar with all technical phases of aircraft maintenance and allied equipment. Required to know and understand management principles and their application when dealing with subordinates. The efficiency with which the incumbent performs his work will contribute greatly to the over-all mission of the Air National Guard within a State.

### II. DUTIES AND RESPONSIBILITIES:

1. Responsible for production planning and control of the Aircraft Maintenance Section, coordinating activities with the Production Scheduling Technician and the Maintenance Supervisor. Arranges for work assignment and deadlines on priority jobs in coordination with production control.

2. Directly supervises all field type maintenance (hangar maintenance) including aircraft docks, and all shops. The shops consist of hydraulic, propeller, instrument, electrical, jet engine repair and build-up, sheet metal, and machinist.

3. Directly supervises all flight line maintenance (organizational maintenance) including all unscheduled maintenance.

4. Assigns work to subordinates considering individual skills, aptitudes and knowledge.

5. Performs necessary follow-up on all assigned jobs. Must be aware of any work stoppage, problems or bottlenecks that may occur during the operation and take necessary steps to resolve these difficulties. Main-

tenance duties which will be accomplished consist of; scheduled aircraft and engine inspections, scheduled engine and accessory change, unscheduled maintenance, etc.

6. Conducts personnel actions that may include; approval of annual and sick leave and forwards it for final approval, settles complaints arising from work assignments, pay and job requirements, takes necessary action to create good work habits, and shifts personnel as required to meet peak workloads. Refers problems to the Maintenance Supervisor when they cannot be settled at this level.

### III. PHYSICAL WORK EFFORT:

Active; climbs, works in straining position.

### IV. WORKING CONDITIONS:

Inside and outside work; in proximity of moving propellers and jet engine blasts; danger of falling; danger of fumes and fire from high octane gasoline.

### V. QUALIFICATIONS:

#### A. Mandatory:

1. Minimum of five (5) years' experience as an Aircraft Maintenance Technician, either civilian or military capacity.

2. Capable of researching, reading, and understanding technical orders, technical manuals, and stock lists.

3. Must be familiar with Air National Guard and Air Force aircraft maintenance procedures.

#### B. Desirable:

Graduate of formal maintenance training courses equivalent to the requirements for an A&E certificate.



**Plaintiff's Exhibit 4. \*AFR 60-2**

**Air Force Regulation  
No. 60-2**

**Department of the Air Force  
Washington, 14 March 1955**

**HISTORICAL  
FLYING**

**Annual Flying Requirements**

	<i>Paragraph</i>
Purpose and Scope .....	1
Policy .....	2
Flight Requirements .....	3
Pilot Flying Examinations .....	4
Time Waivers .....	5
Evaluation Procedures .....	6
General Provisions .....	7
Exceptions .....	8

1. Purpose and Scope. This Regulation prescribes the annual flying requirements, flying examinations, and evaluation procedures. It applies to the following rated officers on flying status:

a. Officers on active duty.

b. Reserve Officers who are either mobilization assignees or are assigned to Air Force Reserve Combat, Combat Support and Flying Training Units (see AFR 36-73 for exceptions).

c. Air National Guard of the United States. (Exceptions are given in ANGR 60-2.)

2. Policy. It is Air Force policy that the minimum flying hours prescribed in paragraph 3 will be accomplished annually by rated personnel.

a. Commanders and rated personnel will be jointly responsible for insuring that minimum Combat Readiness

\* This Regulation supersedes AFR 60-2, 29 December 1953.

Training requirements set forth below are completed by all concerned.

b. Commanders will not exceed the number of flying hours allocated to their Command by current programed flying hour documents.

c. It is not the intent of this Regulation to restrict additional flying training needed to improve or upgrade unit and individual capabilities or to restrict essential flights in support of command operations.

d. The maintenance of high level of skill in the performance of rated duties is of paramount importance. All flights made will be aimed at meeting these requirements. Flights must be scheduled to achieve maximum training and economy benefits.

### 3. Flight Requirements:

a. *All pilot personnel.* A minimum of 100 hours and a maximum of 120 hours pilot time flown as first pilot, first pilot instructor, co-pilot, or command pilot, of which:

- (1) 20 hours will be instrument flight time, whether or hooded, of which 10 hours will be flown each 6 months.
- (2) 15 hours will be night flight time, of which 6 hours will be flown each 6 months.
- (3) 35 hours minimum will be flown each 6 months.
- (4) At least 50 percent of each requirement above will be as first pilot or first pilot instructor at the controls of an aircraft; except that for command pilots, the above requirements other than (1) may be met when flying as co-pilot.

b. *Aircraft observer personnel (except aircraft observer (medical) and flight surgeons).* A minimum of 100 hours and a maximum of 120 hours as aircraft observer, perform-

ing in-flight duties common to the individual's rating and specialty, of which:

- (1) 35 hours minimum will be flown each 6 months.
- (2) 15 hours will be flown at night, of which 6 hours will be flown each 6 months.
- (3) 6 flights will be of a minimum of 500 nautical miles duration.

c. *Aircraft observer (medical) and flight surgeons.* A minimum of 100 hours and a maximum of 120 hours as aircraft observer (medical) or flight surgeon, of which:

- (1) 35 hours minimum will be flown each 6 months.
- (2) 20 hours will be flown observing instrument flight, of which 10 hours will be flown each 6 months.
- (3) 15 hours will be flown observing night flight of which 6 hours will be flown each 6 months.

4. Pilot Flying Examinations. All pilots and senior pilots are required to complete satisfactorily within a period of sixty days prior to their birthday the following flying examinations:

a. Demonstrate qualification as first pilot in one type of military aircraft.

b. Qualify for Air Force Instrument Certificate (see AFR 60-4).

5. Time Waivers. Time Waivers to the provisions of paragraph 4 are enumerated below for pilots in categories listed. Provisions of paragraph 4 will be complied with before the end of waiver period.

a. *180 day waiver:*

- (1) After graduation from an Air Force Advance Pilot School.
- (2) After date of recall to active duty.

- (3) When a pilot has been off flying status for six months or over.
- (4) For pilots participating in the Reserve Forces Program this waiver is granted commencing on date of assignment or attachment for flying, whichever is later.

b. *90 day waiver.* When not on flying status for a period of more than thirty days and less than six months.

## 6. Evaluation Procedures:

### a. *Annual Evaluation:*

- (1) Within 30 days subsequent to each 1 July, commanders will review the records of each person who is assigned or attached to their command for flying to determine if the requirements of this Regulation have been met.
- (2) Those persons who failed to meet the requirements of this Regulation will be classified in one of the categories described below:
  - (a) Category I—Non-compliance was due to circumstances beyond control of the individual.
  - (b) Category II—Non-compliance was due to failure of the individual to use properly the available opportunities or to such basic lack of flying aptitude as to render continuation on flying status undesirable.
- (3) Personnel placed in Category II will be ordered to appear before a flying evaluation board.

b. *Failure to Pass Pilot Qualification Check.* When a pilot fails to meet all of the provisions of paragraph 4, he immediately will be evaluation in accordance with "a" above, instead of waiting for the annual evaluation.

c. *Suspension from Flying.* A person classified in Category II need not be suspended from flying pending his

appearance before a flying evaluation board, except when such person is considered unfit for flying.

7. General Provisions:

a. Flying time acquired as pilot or co-pilot in other than military aircraft of the armed services, powered with engines of at least 400 horsepower, may be credited 100 percent toward the requirements of this Regulation.

b. In meeting the requirements prescribed above, the instrument flight time performed during night flight conditions will be applied to either the instrument flight time requirements or the night flight requirements, but not to both.

c. Personnel on flying status as pilots, possessing an additional rating as an aircraft observed, are required to comply with pilot requirements of this Regulation only.

8. Exceptions. Commanders are authorized to suspend or modify any or all provisions of this Regulation when they consider such action necessary to accomplish a combat mission.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

OFFICIAL:

E. E. TORO

Colonel, USAF

Air Adjutant General

N. F. TWining

Chief of Staff, United States

Air Force

DISTRIBUTION:

S



**Plaintiff's Exhibit 5. File of Bureau of  
Employee's Compensation**

**EMPLOYEE'S NOTICE OF INJURY OR  
OCCUPATIONAL DISEASE**

**Federal Employees' Compensation Act**

This notice should be submitted to the immediate superior by an injured civil employee of the Federal Government, or by someone on his behalf, within 48 hours after the injury. Notice may be given either personally or by mail. It should be retained by the official superior unless the injury causes disability for work beyond the day or shift when injury occurred or results in any charge against the Bureau for medical expense, when it should be forwarded to the U.S. DEPARTMENT OF LABOR, Bureau of Employees' Compensation, together with the official superior's report of injury, Form C. A. 2. Before compensation is paid, written claim on Form C. A. 4 must be submitted to the Bureau.

Date of this notice 30 May, 1958

1. I hereby certify that I am employed as a Aircraft Maintenance Chief at the 104th FINCEPTION, Maryland AFWG, 2701 Eastern Blvd., Baltimore 20, Maryland and on Tuesday 20 May, 1958 at 11:30 A.M. I was injured in the performance of my duties at (1) mile north of Point of Rocks, Maryland.

2. Cause of injury Aircraft collision (which resulted in explosion and fire) in mid air at approximately 8,000 feet between jet trainer T-33, piloted by me, and Capital AL Viscount.

3. Nature of injury Second degree burns of head, hands, and wrists.

4. Names of witnesses to injury This information will be furnished at a later date when it is available.

5. If this notice was not given within 48 hours after the injury, explain reason for delay and state name of person to whom notice was first given and when Verbal notice (telephone) was first given at 12:15 P.M. EDT, 30 May 1958, to Lt. Col. Victor F. Kilkowski by nurse Mrs. Fredia ? ? ? ? of Frederick Memorial Hospital, Frederick, Maryland. Written notice delayed due to other commitments of this accident which had priority and had to be properly taken care of.

This injury was not caused by my willful misconduct, intention to bring about the injury or death of myself or of another, nor by my intoxication, and I hereby make claim for compensation and medical treatment to which I may be entitled by reason of the injury sustained by me.

Name GEORGE J. WINDISH, Capt. MD. AFNG  
Adjutant

for JULIUS R. MCCOY  
Address 6 C Alder Drive  
Baltimore 20, Maryland

Signed by Capt. George J. Windish  
do to the fact that Capt. McCoy's  
hands are burned and he is unable  
to sign at this time.

July 14, 1958

Mr. Julius R. McCoy  
6 C Alder Drive  
Baltimore 20, Maryland

Re: File No. X-1201551

Dear Mr. McCoy:

Consideration of your claim for compensation is being held in abeyance due to the fact that you have not executed and returned to us the form of assignment which we sent to you with our letter of June 6, 1958. Will you please let us

have this assignment at your convenience in order that consideration may be given to payment of the bills for your medical and hospital treatment.

Very truly yours,

STUART ROTHMAN  
Solicitor of Labor

By \_\_\_\_\_  
WM. B. WRIGHT  
Chief, Subrogation Branch

SOL:WBWright:dwh

August 28, 1958

Mr. Julius R. McCoy  
6 C Alder Drive  
Baltimore 20, Maryland

Re: File No. X-1201551

Dear Mr. McCoy:

We have not received replies from you to our letters of June 6, 1958, and July 14, 1958, regarding your third party damage claim. If you do not desire to avail yourself of benefits under the Federal Employees' Compensation Act, will you please so state at once; otherwise please return to this office the assignment furnished you with your signature, which is required by the provisions of the Federal Employees' Compensation Act.

Very truly yours,

STUART ROTHMAN  
Solicitor of Labor

By \_\_\_\_\_  
WM. B. WRIGHT  
Chief, Subrogation Branch

SOL:WBWright:dwh

# AGREEMENT

WHEREAS it is provided by Section 26 of the Federal Employees' Compensation Act (5 USCA Sec. 776) that if an injury or death for which compensation is payable thereunder is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the Bureau of Employees' Compensation may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability, and further provides that if the beneficiary shall refuse to make such assignment when required by the Bureau, he shall not be entitled to any compensation under said Act.

NOW THEREFORE, in consideration of the payments made or to be made to me by the United States under the Federal Employees' Compensation Act on account of the injury sustained by me on May 20, 1958, at One mile north of Point of Rocks, Maryland, while employed as Aircraft Maintenance Chief (Pilot), by the Department of the Air Force, I hereby sell, assign, transfer, and set over to the United States of America all my right, title and interest in and to my claim for damages against Capital Airlines, and against any other parties other than the United States who may be legally liable for said injury, together with all rights of action thereunder.

Witness my hand and seal this 3 day of Oct., 1958.

JULIUS R. MCCOY (SEAL)

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

Witness:

HERBERT C. MORRIS, JR.

OFFICE OF  
U.S. PROPERTY AND FISCAL OFFICER  
STATE OF MARYLAND  
STATE MILITARY RESERVATION  
HAVRE DE GRACE, -MARYLAND

29 May 1958

**CERTIFICATE**

I certify that Julius R. McCoy was working as a Civil Employee of the United States at the time of injury and *not* as a member of the Maryland National Guard.

IRVIN E. EBAUGH  
Irvin E. Ebaugh  
Lt. Col. NGB  
USP&FO-Maryland

---

STATE OF MARYLAND  
MILITARY DEPARTMENT  
OFFICE OF  
U. S. PROPERTY AND FISCAL OFFICER FOR MARYLAND  
STATE MILITARY RESERVATION  
HAVRE DE GRACE, MARYLAND

2 June 1958

U.S. Department of Labor  
Bureau of Employees' Compensation  
Washington 25, D. C.

Gentlemen:

Forwarded herewith Invoice from Robert H. Pilgram, M.D., in the amount of \$50.00, and invoice from Frederick Memorial Hospital, in the amount of \$40.14, covering medical services rendered Julius R. McCoy, who was injured on 21 May 1958.



Forms C.A. 1, C.A. 2, C.A. 16 and certificate, covering this injury, were forwarded your office on 29 May 1958.

Very truly yours,

IRVIN E. EBAUGH  
Irvin E. Ebaugh  
Lt. Col. NGB  
USP&FO-Maryland

2 Incls.

1-Inv in amt of \$50.00

2-Inv in amt of \$40.14

STATE OF MARYLAND  
MILITARY DEPARTMENT

OFFICE OF

U. S. PROPERTY AND FISCAL OFFICER FOR MARYLAND

STATE MILITARY RESERVATION

HAVRE DE GRACE, MARYLAND

June 23 1958

U.S. Department of Labor  
Bureau of Employees' Compensation  
Washington 25, D. C.

Gentlemen:

Forwarded herewith Statement from Frederick Memorial Hospital for services rendered Julius R. McCoy on 5/21/58.

Invoice covering these services was forwarded to your office on 2 June 1958.

Very truly yours,

IRVIN E. EBAUGH  
Irvin E. Ebaugh  
Lt. Col. NGB  
USP&FO-Maryland

1 Incl  
Statement

STATE OF MARYLAND  
MILITARY DEPARTMENT

OFFICE OF

U. S. PROPERTY AND FISCAL OFFICER FOR MARYLAND  
STATE MILITARY RESERVATION  
HAVRE DE GRACE, MARYLAND

14 October 1958

U.S. Department of Labor  
Bureau of Employees' Compensation  
Washington 25, D.C.

Gentlemen:

Forwarded herewith Statement, in the amount of \$40.14, covering services rendered Capt. Julius R. McCoy by Frederick Memorial Hospital.

Necessary forms covering injury were forwarded your office on 29 May 1958.

Very truly yours,

IRVIN E. EBAUGH  
Irvin E. Ebaugh  
Lt. Col. NGB  
USP&FO-Maryland

Incls.

Statement fm Frederick Memorial  
Hospital, in amt of \$40.14

**Plaintiff's Exhibit 6, Special Orders No. 182, Dated 13 Sept. 1955**

**MILITARY DEPARTMENT  
STATE OF MARYLAND  
OFFICE OF THE ADJUTANT GENERAL  
FIFTH REGIMENT ARMORY  
BALTIMORE**

13 September 1955

Mar

Special Orders  
No. 182

**EXTRACT**

1. By authority of the Secretary of the Air Force, contained in communication from the Chief, National Guard Bureau, dated 7 September 1955, 1st Lt. Julius R. McCoy, AO 784050, 104th Fighter-Interceptor Squadron, MdANG, will proceed from Baltimore, Maryland on 18 September 1955, entering upon active duty for training thereon, reporting to the Commander, 3345th Technical Training Wing, Chanute Air Force Base, Illinois not later than 0800 hours 19 September 1955 as a student at the Aircraft Maintenance Officer Course OB4341, course starting 21 September 1955 for duration of 175 academic days. Upon completion of the course, or unless sooner relieved by proper authority 1st Lt. McCoy will return to Baltimore, Maryland. EDCSA 18 September 1955.

Expenses involving pay (including allowances), and transportation chargeable to:

TDN Pay : 5763870 041-1218 P521-01 S18-070

Travel: 5763870 064-4210 P527-02, 03, S22-606

Travel by privately owned conveyance, rail or commercial air authorized. If travel is performed by privately owned conveyance and more travel time is involved than a common carrier would require, officer is not considered in a pay status for any time in excess of the travel time allowed by common carrier. Travel of dependents not authorized.

Transportation Requests, if desired, will be secured from the U.S. Property and Fiscal Officer for Maryland. Travel will be paid in accordance with the provisions of ANGB 173-01, and changes that may be made thereto. Finance Officer making payment under this authority number will forward one copy of each paid voucher to the U.S. Property and Fiscal Officer for Maryland, State Military Reservation, Havre de Grace, Maryland. The provisions of JTR dated 22 December 1950 will apply. Entitled to flying pay under the provisions of Executive Order 10152, dated 17 August 1950.

Officer is cleared for access to classified material and equipment up to and including SECRET.

Officer will have in his possession the following records, when reporting to the school:

- (a) Officer's current medical record.
- (b) Officer's Form 5
- (c) Copy of orders placing officer on flying status and/or NGB Form 3a.
- (d) If available, copy of NGB Form 66 "Brief of Officer's Record".

By Order of The Governor:

MILTON A. RECKORD

Major General

The Adjutant General

Official:

BENJAMIN F. CASSELL

Benjamin F. Cassell

Lt. Col., AGC, MdNG Assistant

Distribution:

CNGB-Attn:AF Div. Air O&T (2)

Cmdr 104th FIS (30) Cmdr 3345th Tech Tng Wing (30)

USP&FO (5) Gen Ruhl (1)

Files

## Plaintiff's Exhibit 7, AFR 45-2

\*AFR 45-2

13

ARMY REGULATIONS  
No. 130-5  
AIR FORCE REGULATION  
No. 45-2

DEPARTMENTS OF THE ARMY AND  
THE AIR FORCE  
WASHINGTON 25, D. C., 13 April 1949

NATIONAL GUARD  
GENERAL PROVISIONS

	Paragraph
Authority .....	1
General .....	2
Responsibilities of Chief, National Guard Bureau ....	3
National Guard Bureau Regulations .....	4

1. Authority.—*a.* National Security Act of 1947 (Public Law 253—80th Cong. WD Bul. 11, 1947).

*b.* Transfer Order 10 (JAAF. Bul. 12, 1948), National Military Establishment.

*c.* JAAFAR 1-11-20, 1948, as changed.

2. General.—*a. Army National Guard*—The National Guard Bureau is charged with administering approved Department of the Army policies other than those relative to training, for the Army National Guard not in the Federal service, and with promulgating Department of the Army directives and regulations applicable to the Army National Guard, including those relating to training.

*b. Air National Guard*.—The National Guard Bureau is charged with administering approved Department of the

\* These regulations supersede WD General Orders 6, 1926.



Air Force policies other than those relative to training, for the Air National Guard not in the Federal service, and with promulgating Department of the Air Force directives and regulations applicable to the Air National Guard, including those relative to training.

*c. Joint policies.*—The National Guard Bureau is charged with administering approved joint Army and Air Force policies other than those relative to training, when such policies are applicable to both the Army National Guard not in the Federal service and the Air National Guard not in the Federal service, and with promulgating joint Army-Air Force directives and regulations applicable to both the Army National Guard and the Air National Guard, including those relating to training.

*d. Communication.*—The National Guard Bureau is the channel of communication between the Departments of the Army and the Air Force and the several States, Territories, and the District of Columbia on all matters pertaining to the Army National Guard and the Air National Guard.

*e. Records.*—The National Guard Bureau is the office of record of Department of the Army and Department of the Air Force records of the Army National Guard and Air National Guard not in the Federal service.

### 3. Responsibilities of Chief, National Guard Bureau.—

*a.* The Chief of the National Guard Bureau is responsible to—

- (1) The Chief of Staff, United States Army, for all matters pertaining to the Army National Guard.
- (2) The Chief of Staff, United States Air Force, for all matters pertaining to the Air National Guard.
- (3) Jointly to the Chief of Staff, United States Army, and the Chief of Staff, United States Air Force, for all matters pertaining to both the Army National Guard and the Air National Guard.

b. The Chief of the National Guard Bureau is responsible for—

- (1) The proper organization of the National Guard Bureau, which shall include an Army Division and an Air Force Division, together with necessary administrative and executive offices.
- (2) Efficient administration of the functions of the National Guard Bureau as outlined in paragraph 2.
- (3) Submission to the Chiefs of Staff of such proposals for changes in existing policies, regulations, and laws as appear desirable to him.
- (4) The maintenance of mutual understanding and cordial relations between the Departments of the Army and the Air Force, and the Governors, military officials, and National Guard of the several States, Territories, and the District of Columbia.

4. National Guard Bureau Regulations.—a. The National Guard Bureau will, from time to time, publish joint National Guard Regulations when such regulations are applicable to both the Army and Air National Guard, or separate National Guard Regulations when such regulations are applicable to the Army National Guard only or to the Air National Guard. National Guard Regulations will govern the Army National Guard and the Air National Guard when not in Federal service in the same manner as Army Regulations or Air Force Regulations govern the Regular components of the service.

b. Joint National Guard Regulations will be issued subject to the approval of the Chief of Staff, United States Army, and the Chief of Staff, United States Air Force. National Guard Regulations pertaining to the Army National Guard only will be issued subject to the approval of the Chief of Staff, United States Army. National Guard Regulations pertaining to the Air National Guard only

will be issued subject to the approval of the Chief of Staff, United States Air Force.

c. The Chief, National Guard Bureau, is authorized, within the limitations imposed by law, to issue such other publications pertaining to the Army or to the Air National Guard when not in Federal service as he may deem advisable or necessary, provided that such publications are pursuant to approved policy of the appropriate service or are specifically approved by the Chief of Staff of the appropriate service.

(AG-326 (31 Mar. '49))

BY ORDER OF THE SECRETARIES OF THE  
ARMY AND THE AIR FORCE:

OMAR N. BRADLEY  
*Chief of Staff, United States Army*

Official:

EDWARD F. WITSELL  
*Major General*  
*The Adjutant General*

HOYT S. VANDENBERG  
*Chief of Staff, United States Air Force*

Official:

L. L. JUDGE  
*Colonel, USAF*  
*Air Adjutant General*

Distribution:

Army:

C.

For explanation of distribution formula, see  
SR 310-90-1

Air Force:

D; G.

For explanation of distribution formula, see  
AFR 5-4.

**Deposition of Irvin E. Ebaugh, Plaintiffs' Exhibit 9**

11

Washington, D. C.

Wednesday, September 28, 1960

Deposition of IRVIN E. EBAUGH, called for examination by counsel for Defendant; The United States of America, pursuant to notice, at Grand Jury Room No. 3, U.S. District Courthouse, 3rd Street & Constitution Avenue, Northwest, Washington 1, D. C., before Alfred F. Goldstein, a notary public in and for the District of Columbia, commencing at 3:50 o'clock p. m., when were present on behalf of the respective parties:

For the Plaintiffs GLIEDMAN, MORGAN, LEVIN,  
DICKSON and JOHNS:

THEODORE E. WOLCOTT, ESQ.,  
36 West 44th Street,  
New York 36, New York

For the Plaintiffs CAPITAL AIRLINES and ESTATES  
OF MEYER and BRADY:

RICHARD W. GALIHER, ESQ.,  
1215 - 19th Street, N. W.  
Washington 6, D. C.

For the Plaintiffs GLIEDMAN and DICKSON (Mary-  
land case only:

EVERETT L. BUCKMASTER, ESQ.,  
10 Light Street,  
Baltimore 2, Maryland

For the Defendant JULIUS R. McCOY:

JOHN H. MUDD, ESQ.,  
10 Light Street,  
Baltimore 2, Maryland

12 For the Defendant THE UNITED STATES OF AMERICA:

RUSSELL O. PETTIBONE, ESQ.,  
3738, Civil Division,  
Department of Justice,  
Washington 25, D. C.

ALLEN BLUMBERG, ESQ.,  
Civil Division,  
Department of Justice  
Washington 25, D. C.

LT. COL. ROBERT A. PRICE, ESQ.,  
Office of Judge Advocate General,  
Department of the Air Force  
Pentagon Building,  
Washington 25, D. C.

14 PROCEEDINGS

MR. WOLCOTT: By stipulation among counsel for all of the parties, it is agreed that objection as to any of the questions shall be reserved for the time of the trial, except for objections as to the form of the question only, which shall be made at this time, at this proceeding.

It is also stipulated and agreed by the parties that copies of the deposition shall have the same force and effect as originals and that filing is waived. Signing is waived except that counsel reserve the right to first check the transcript for typographical and other errors.

Is that right?

MR. PETTIBONE: It is all right, yes.

MR. MUDD: Yes.



15 Whereupon,—

**Irvin E. Ebaugh**

was called as a witness by counsel for the defendant, The United States of America, and, having been first duly sworn by the notary public, was examined and testified as follows:

**Direct Examination**

**By MR. PETTIBONE:**

Q. Will you state your full name and address? A. Lt. Col. Irvin E. Ebaugh, State Military Reservation, Havre De Grace, Maryland, and I live in Westminster, Maryland.

Q. What is your present job or position, Colonel Ebaugh? A. I am the United States Property and Fiscal Officer for the State of Maryland.

Q. And how long have you had that position? A. I have been in this position since 1955.

Q. Where is your office located? A. At the State Military Reservation at Havre De Grace, Maryland.

**MR. PETTIBONE:** Off the record.

[Discussion off the record.]

**By MR. PETTIBONE:**

Q. What briefly are the duties of your position as United States Property and Fiscal Officer? A. I am charged  
16 with properly handling any federal moneys appropriated to the State of Maryland or allotted to the State of Maryland for the support of the National Guard, to maintain all accountable records for federal property that is sent to the state for use by the National Guard.

Q. Do you keep any records of personnel assigned to the Maryland Air National Guard? A. In my office, no.

Q. Do you handle any of the records, the administrative records that pertain to such personnel? Do they pass through your office in any way? A. We do not now, no.

That has been delegated to an assistant who is located at the Air National Guard base at Martin Airport.

Q. Going back to May of 1958, did you handle such administrative matters? Did your office handle such administrative matters for personnel of the Maryland Air National Guard at that time? A. We processed the permanent duty technician pay rolls and maintained the records for those pay rolls at that time.

Q. Going back to that time and particularly May of 1958, did you ever have occasion to forward any papers or records pertaining to Air Technician employees, civilian employees of the Maryland Air National Guard through your office to other agencies or departments of the government? A. Yes, I did.

Q. Did you ever process any such papers through your office to the Bureau of Employees Compensation of the Department of Labor. A. I did, yes.

Q. Do you recollect that you ever processed any such papers through your office pertaining to one Captain Julius R. McCoy, of the 104th Fighter Interceptor Squadron of the Maryland Air National Guard? A. Definitely, yes.

Q. Do you remember particularly what those papers or documents were relating to Captain McCoy, which you processed through your office to the Bureau of Employees Compensation? A. This was, of course, the papers that are needed by the Bureau of Employees Compensation in support of any claims in payment of hospitalization that might arise out of an injury.

Q. Were these letters or forms or what kind of papers were these? A. Forms and a letter of transmittal from my office.

Q. Specifically, do you remember what kind of forms or what forms they were? A. It was a CA Form 1, CA Form 2, and CA Form 16. CA Form 1 is the individual's report of the accident or the circumstances surrounding the disability. CA Form 2 is the immediate supervisor's statements. And CA Form 16 is a request for hospitalization.

Q. Were these special forms pertaining to this particular accident of Captain McCoy's or are they forms of a general nature used in all case? A. They were forms of a general nature used in all instances for technicians.

Q. Do you know who drew up these forms or who provided them, where they come from? A. They are provided from normal government channels, the same as you get other forms from the Department of Labor.

Q. When you received these forms that you referred to, CA-1, CA-2, CA-16, had they been filled in and executed? A. They had been; yes, sir.

Q. From whom did they come to you, who transmitted them? A. They were transmitted to me from the Air Technician Base Detachment, commanded at that time by Colonel Kilkowski at Martin Airport.

Q. And what did you do with these forms when they came to you from this detachment? A. These forms were forwarded on to the Department of Labor.

Q. By your office? A. By my office.

Q. And did you submit a letter of transmittal with them when you forwarded them from your office to the Bureau of Employees Compensation? A. Yes, I did.

MR. PETTIBONE: I would like the reporter to mark this as U.S. Exhibit for identification No. 13.

[The document referred to above was marked U.S. Exhibit No. 13 for identification.]

By MR. PETTIBONE:

Q. I now hand you U.S. Exhibit No. 13 for identification and ask you if you know what that is. A. This is a copy of my letter of transmittal to the Department of Labor with the enclosed certificate that I had executed and forwarded with the forms.

Q. What are the forms referred to in your letter of transmittal? A. CA-1, CA-2, and CA-16.

Q. And on the second page of that document, which you hold, is there a certificate? A. Yes, there is.

Q. And is that a certificate which you executed? A. I had executed that certificate, yes.

Q. Did you sign this certificate yourself? A. Yes, I did.

20 Q. And sent the original of it with this letter of transmittal to the Bureau of Employees Compensation? A. That is right.

Q. This certificate provides space that you certify that one Julius R. McCoy, who was Julius R. McCoy? A. He was a member of the permanent technician detachment employed at the air base in Martin Airport.

Q. Your certificate states that he was a civil employee of the United States at the time of injury and not a member of the Maryland National Guard. What was the basis of the information for making this certificate?

MR. GALIHER: I object to that. I think the document speaks for itself.

MR. PETTIBONE: It doesn't speak for itself.

MR. GALIHER: This man was authorized and delegated to do what he did here.

MR. PETTIBONE: This is not an objection to the form of the question.

By MR. PETTIBONE:

Q. Go ahead and answer the question.

MR. WOLCOTT: You will note my objection.

MR. BUCKMASTER: We all object.

MR. PETTIBONE: I realize that. I don't feel it violates the best evidence rule, so we will have to go ahead.

21 THE WITNESS: Captain McCoy, as his duties, as a permanent air technician, is actually a civilian employee and, as such, is not a member of the Guard during the normal 40-hour week he is expected to work.

By MR. PETTIBONE:

Q. Did you have any personal knowledge of the accident in which he was involved in May 20, 1958?

MR. WOLCOTT: Same objection.

MR. GALIHER: Same objection.

MR. BUCKMASTER: Same objection.

THE WITNESS: I had no knowledge of the accident.

By MR. PETTIBONE:

Q. Had you received any information concerning the accident in which he was involved on May 20, 1958? A. Just the newspaper accounts and the few verbal accounts that normally are scattered around by word of mouth, but nothing in detail.

Q. Was there any information concerning the accident in which he was involved on May 20, 1958, with resultant injury to him, to be found in these forms CA-1, CA-2, and CA-16, which you were transmitting to the Bureau of Employees Compensation? A. Those are just brief statements that are required to be filled in on the forms about the injury, the nature of the injury and the cause.

Q. When you forwarded these forms—let me ask you this first: Is it customary to forward these CA forms when they come to your office to the Bureau of Employees Compensation if they relate to a civilian employee of the Air National Guard of Maryland? A. Yes, it is.

Q. So that the forwarding, would the forwarding of the forms in this instance, then, be a customary part of a normal routine of your office? A. That is right; yes, sir.

Q. And is it normal and customary in such cases to enclose your own certificate? A. This is required by the Department of Labor, positively identifying him as a technician rather than an Air National Guard man.

Q. These forms normally pertain to the injury of a civilian employee of the Air National Guard during the course of his employ?

MR. GALIHER: I object. He hasn't said that. You assume for the purposes of your question that his answer will be yes, and you are leading your own witness now.

MR. PETTIBONE: I will rephrase the question.



By MR. PETTIBONE:

Q. Do Forms CA-1, CA-2, and CA-16, when received normally in your office, in the normal course of this business, ordinarily relate to an injury sustained by a civilian employee of the National Guard in the State of Maryland? A. Yes.

Q. Did these forms in this instance with respect to Julius R. McCoy relate to an injury? A. They did.

Q. Now, in general, when you receive such forms pertaining to an employee, any employee of the Maryland Air National Guard, do you normally prepare a certificate to attach to your letter of transmittal when you send them to the Bureau of Employees Compensation? A. After a review of the forms, yes, we do attach the certificate and forward them.

MR. WOLCOTT: Do you mean review of the forms or review of the file?

THE WITNESS: Review of the form, information contained thereon.

By MR. PETTIBONE:

Q. What is the basis of your information? What do you use to supply you with information to assist you in preparing your certificate in the usual way in the normal case?

A. The information taken from the individual's statements on the CA-1 and the immediate supervisor on the CA-2.

Q. Did you file any action in this instance? A. Yes.

Q. That is with respect to this Exhibit No 13?

A. That is right.

Q. Did you personally talk with Julius R. McCoy before you forwarded these forms by this letter of transmittal with this certificate? A. No, I did not.

Q. Had you personally talked with Colonel Kilkowski, the detachment commander before you forwarded this letter of transmittal with the certificate? A. No, I did not.

Q. Had you personally investigated the accident in which Captain McCoy was involved on May 20th before you forwarded the letter of transmittal and the certificate? A. No, I had no part in the investigation nor did I make any of my own.

Q. Had you received information concerning this accident and the injury to Captain McCoy from any source other than the CA-1, CA-2, and CA-16 forms? A. Newspaper accounts, radio, that is all.

MR. PETTIBONE: That is all.

### Cross-Examination

By MR. GALIHER:

Q. How long had you known Captain McCoy? A. I had known of Captain McCoy since he had been employed as a technician. Personally, I did not know him too well.

25 Q. You were acquainted with his duties? A. I knew he had been hired as a technician at the Air National Guard. I didn't have full and complete knowledge of his duties. This is beyond the scope of my responsibilities, to have such knowledge.

Q. Those forms that you filled out in this case were similar to other forms that you used in connection with other compensation cases at your base? A. That is right. They are. We use these for Army technicians and air technicians, the full-time technicians, both Army and Air.

Q. And your investigation led you to believe that you were justified in filling them out the way you did? A. Yes, definitely.

Q. What relationship did you have with Colonel Kilkowski? A. Colonel Kilkowski again was a member of the technician detachment. Beyond a few times when our duties brought us, caused us to meet, that is all.

Q. Where were you located in May of 1958 at the time of this accident that we are inquiring into? A. At the State Military Air Reservation in Havre de Grace, Maryland.

26 Q. Had you been to Martin Airfield where the 104th Squadron was stationed? A. Not on that day, no.

Q. On other occasions? A. On other occasions. There are occasions when my duties require me to go there, to visit with my assistants and check over their operation, their part of the operation.

Q. What was your title in May of 1958, Colonel? A. As the United States Property and Fiscal Officer for Maryland.

Q. And you held a commission from whom? A. I am actually on active duty. I was called to active duty by the Department of the Army.

Q. And you were at that time? A. Yes.

Q. And did you wear any other hat, did you have any other title or any other duties at that time? A. That is all.

Q. What were your duties as far as the 104th Squadron at Martin Field was concerned? A. My interest in the 104th Squadron, Fighter Squadron, is to see that they are properly supported equipmentwise and that funds that are given to the State of Maryland for the operations, to support the operations were handled properly.

Q. You mean funds from the United States Government? A. Federal funds.

27 Q. How frequently would you visit them at Martin Field? A. My visits were rather infrequent, about three or four a year. I maintained contact by having my assistant come to my office.

Q. Was the 104th Squadron required to give you detailed reports from time to time on all property and equipment at the Martin Field? A. Not the 104th Squadron, no, sir. My assistant, the base supply officer who was supporting the unit.

Q. What was his name? A. Major James I. Considine.

Q. Was he located at your base or at Martin? A. He was located at Martin.

Q. Was he a major of the United States Air Force at that time? We are inquiring into May 20, 1958. A. Na-

tional Guard. He was a National Guard officer. As a technician, he enjoyed the same position as Colonel Kilkowski, Captain McCoy, the balance of the permanent-duty technicians employed there.

Q. That was what again, please? A. Base Supply Officer.

Q. Of the United States Air Force? A. He was the Base Supply Officer of the 104th Fighter Squadron at that time. That was the title he had.

Q. Did he have a commission in the United States  
28 Air Force at that time? A. In the National Guard.

Q. In the National Guard? A. In the National Guard, State of Maryland, the Air Force. He was commissioned in the Air Force of the State of Maryland.

Q. Now, you said he was your assistant. Exactly in what way would you be able to give him instructions or orders if he was not a member of the United States Air Force?

A. As a civilian technician, he was working directly under me.

Q. Under you? A. That is right, He answered to me.

Q. And that was true also of Captain McCoy? A. No, that was not true of Captain McCoy. Captain McCoy answered directly to the Base Detachment Commander, who at that time was Colonel Kilkowski.

Q. Was Colonel Kilkowski under you at that time? A. No, he is not under me.

Q. What was your relationship, if any, to Colonel Kilkowski? A. Just to see that he was—that my assistants at the base were properly discharging their duties in support of the Air unit.

Q. But in his status as a technician, you did have  
29 authority over him, did you not? A. In his status as a technician I had no authority over him other than to process the pay rolls through my office; that is, the technicians' pay rolls. He answered directly to the adjutant general of the State of Maryland.

Q. On the occasions (I think you mentioned three or four times a year) that you went to Martin Field, what did you

do? A. Check over the supply procedures, the warehouse procedures, stocks of supplies on hand to support the unit, and meet with my controller there to check on the handling of the moneys, federal moneys.

Q. And if you found anything that dissatisfied you, what do you do about it? A. Cause action to be taken to clear it up immediately.

Q. And would you tell us what action that would consist of, please? A. That actually would be to—well, it could be in any number of different fields. If the warehousing was being improperly handled and caused the personnel working for Major Considine to stop what they were doing and straighten them out.

Q. The personnel would consist of whom? Technicians? A. Technicians working for Major Considine in the supply area.

Q. I see. Do you have any recollection as to specifically in a period of, let us say, for one year prior to May 1958, of any situations which came to your attention which dissatisfied you and which resulted in your giving orders to eliminate? A. No, I do not.

Q. You had nothing to do with the flight evaluation? A. Nothing whatsoever.

Q. There were not any special arrangements for compensation of persons injured at the 104th who belonged to the 104th Squadron, were there, Colonel? I mean by that, you just followed regular procedure in sending in the forms to the Department of Labor. There was nothing unusual about the way compensation claims were handled at your base? A. Oh, definitely not. This is normal. This is normal procedure.

By Mr. WOLCOTT:

Q. Your salary is paid by the federal government? A. That is right.

Q. All of it? A. Yes.

Q. Was there any contribution by the State of Maryland



for the loss of this aircraft, the T-33? A. No, not to my knowledge.

Q. No reimbursement? A. To my knowledge, I know of none.

MR. PETTIBONE: I presume you are referring to 31 Captain McCoy's T-33.

MR. WOLCOTT: I think that was the United States Government's T-33.

MR. PETTIBONE: I wanted to be sure that the record is clear as to what T-33 you are referring to.

By MR. WOLCOTT:

Q. Did you understand I was referring to the T-33 used by Captain McCoy on that day, May 20, 1958? A. I assumed as much.

Q. After you sent in the compensation forms which were attached to your letter, which has been marked Government Exhibit No. 13, what happened after that with respect to this compensation claim? A. We were in receipt, through the unit, once again of bills for the hospitalization. These bills were subsequently forwarded to the department for payment.

Q. Is that the Department of Labor? A. That is right.

Q. And were they paid? A. I can only assume that they were inasmuch as there was never any follow-up made by the hospital through my office.

Q. Normally, if they had not been paid, would there be a follow-up through your office? A. Usually yes. When 32 money is owed, people try to collect it.

Q. Did the State of Maryland contribute to the payment of those bills? A. To my knowledge, no.

Q. These bills were for hospitalization and for medical care; is that right? A. That is right.

Q. Now, did you receive any response from the Department of Labor with reference to your letter, Exhibit No. 13? A. No, I did not.

Q. Normally, do you receive any response? A. Normally no, unless it would be an acknowledgment of receipt.

Q. Would you receive any response from them if there were a rejection of the claim? A. If there were anything that would cause them to reject it, certainly they would come back with questions to my office.

Q. That would be the normal procedure? A. Yes.

Q. You have never received any rejections from this claim; is that correct, sir? A. In this particular case, no; I have received none.

Q. Is there any special compensation act applicable to these air technicians or is that a general compensation act applicable to all federal employees that this application was made under? A. I believe this act is applicable to all federal employees.

Q. That is the general compensation act? A. Yes.

MR. GALIHER: I would like to read into the record at this time the two documents referred to by Colonel Ebaugh, both dated 29 May 1958. The first one is directed to the U.S. Department of Labor, Bureau of Employees Compensation, Washington 25, D. C.

"Gentlemen: Forwarded herewith Forms CA-1, CA-2, and CA-16, covering the injuries sustained by Julius R. McCoy on 20 May 1958, together with certificate certifying that the individual was working as a civil employee at the time of injury. Very truly yours, Irvin E. Ebaugh, Lieut. Colonel, National Guard Bureau, USP&FO-Maryland."

The second certificate, likewise dated 29 May 1958, the second document, dated 29 May 1958, and captioned "CERTIFICATE": "I certify that Julius R. McCoy was working as a civil employee of the United States at the time of injury and not as a member of the Maryland National Guard. [Again signed] Irvin E. Ebaugh, Lieut. Colonel, National Guard Bureau, USP&FO-Maryland."

By MR. WOLCOTT:

34 Q. Colonel Ebaugh, was it a part of your duties as U.S. Property and Fiscal Officer to certify Julius R. McCoy as the civil employee qualified to apply for com-

pensation? A. That is true, yes, and for any other technicians on our pay roll.

Q. And under what act is that, any regulation or statute?

A. The certificate is required by the Department of Labor. This was handled in separate correspondence from the Department of Labor, and I don't have a copy of that.

Q. Now, you referred to Forms CA-1, CA-2, and CA-16, attached to your letter of transmittal, and you stated that you reviewed those forms to see that the information was completed and signed. What was the purpose of reviewing them? A. Just to determine in my mind that the information was complete and that nothing on them would disqualify the individual from the support or from compensation.

MR. WOLCOTT: Thank you.

By MR. BUCKMASTER:

Q. May I ask you a question, Colonel Ebaugh? Who is your immediate supervisor? A. I am assigned to the Chief of the National Guard Bureau here in Washington.

35 · Q. Who is your immediate superior there? A. It would be the Chief of the National Guard Bureau, General McGowan.

Q. How about General Wilson? A. General Wilson is the Chief of the Air Division. In this respect you might say I am wearing two hats, because I am working for the Air and the Army National Guard.

Q. That is a federal agency? A. That is right.

Q. You are not a member of the Maryland National Guard? A. No, I am not. I am a member of the Maryland National Guard on active duty. I have been called to active duty in order to hold the position I have.

Q. You were on active duty at the time of this accident? A. Definitely, yes.

Q. And when you sent in these reports you knew that Captain McCoy had been injured while flying an airplane; is that right? A. Certainly from the reports received there was every indication that he had been.

Mr. BUCKMASTER: That is all.

Mr. WOLCOTT: You mean the airplane, T-33, which was an Air National Guard plane?

THE WITNESS: Yes.

36 By Mr. BUCKMASTER:

Q. I will ask you one more question. When was your first contact with Captain McCoy? When did you first have any contact with Captain McCoy? When did you first have any contact with him? A. Actual personal contact I had none with Captain McCoy.

Q. Did you ever have any other type of contact with him prior to this accident? A. In connection with this accident.

Q. Nor any other capacity? A. I had met him just informally at one of the field training camps. I make it my business to attend the field training camps on visits to determine just how they are getting along.

Q. Did you have any duties in connection with the field training camps? A. No, I just attend as a visitor.

Mr. BUCKMASTER: That is all.

Mr. WOLCOTT: That is all.

#### Redirect Examination

By Mr. PETTIBONE:

Q. At the time you transmitted these CA forms to the Department of Labor by your letter of transmittal dated May 29, 1958, did you have any personal knowledge  
37 of the circumstances leading up to and surrounding the aerial flight in a T-33 which Captain McCoy made on May 20, 1958.

Mr. GALIHER: I object to that question.

Mr. PETTIBONE: I am sorry.

Mr. GALIHER: I object to that question.

Mr. WOLCOTT: That is immaterial.

Mr. GALIHER: He said he didn't investigate it.

By MR. PETTIBONE:

Q. I asked you if you had any personal knowledge. A. I had no personal knowledge of the circumstances surrounding the flight or the accident, no.

MR. PETTIBONE: That is all I have.

### Recross-Examination

By MR. WOLCOTT:

Q. You mean you were not present when the collision took place? A. Definitely not.

MR. PETTIBONE: Thank you.

[Whereupon, at 4:30 o'clock p.m., the taking of the deposition was concluded.]

[Signature waived.]

### Deposition of Major Milton D. Britton, Plaintiffs' Exhibit 10

6

Baltimore, Maryland  
May 11, 1960

Deposition of Major Milton D. Britton, upon oral examination by Plaintiffs, before Bernard C. Daley, Notary Public, taken at the offices of Messrs. Semmes, Bowen and Semmes, 2500 Mathieson Building, Baltimore 2, Maryland, beginning at 2:45 o'clock p.m., Wednesday, May 11, 1960.

7

### APPEARANCES.

RICHARD W. GALIHER, Esq.  
EVERETT L. BUCKMASTER, Esq.  
THEODORE E. WALCOTT, Esq.  
LOUIS DAVIDSON, Esq.  
RUSSELL G. PETTIBONE, Esq.  
JOHN H. MUDD, Esq.  
LT. COL. VICTOR F. KILKOWSKI  
MAJ. JOHN F. R. SCOTT  
MAJ. LAWRENCE W. HUNT



Thereupon—

**Major Milton D. Britton**

was called as a witness and after having been duly sworn was examined and testified as follows:

**Examination by Mr. GALIHER**

Q. Will you give us your full name and address, please?

A. Milton D. Britton, Box 671, Route 15, Baltimore 20, Maryland.

Q. What is your occupation at the present time, Major?

A. Major in the United States Air Force with the  
8 duty title as Air Advisor to the 104th Fighter Squadron.

Q. How long have you been in the United States Air Force? A. Approximately close to fifteen years.

Q. How long have you been detached to the 104th Squadron? A. It was two years the 28th day of January, I believe.

Q. You were there then from January 28, 1958 up to and including the present time? A. Yes, sir.

Q. What had you done just immediately preceding your assignment to the 104th Squadron? A. The previous two-year tour was at Nellis Air Force Base, Las Vegas, Nevada, and my duty title was Base Operations Officer the last twelve months.

Q. How long have you been flying, Major? A. Since March 10, 1943 when I graduated as a pilot. Started in 1942.

Q. Did you receive written orders when you went to the 104th Squadron in January of 1958? A. Yes, sir.

9 Q. What did they state? A. I can't tell you what they say. I can give you—

Q. Please just the substance. A. I received orders approximately three weeks prior to departing Las Vegas said that I would report to 14th Air Force for briefing, proceed then on to CONAC at Mitchell Field, New York, at that time for briefing, report to Duty Station, Harbor Field, 104th,

Baltimore, Maryland. That is the general. It had some time delay enroute, and so forth, but that was the meat of it.

Q. Who did you report to when you arrived in Maryland?

A. The first Maryland Officer I got in touch with was Colonel Kilkowski.

Q. Has he been your senior officer since arrival? A. He has been the Commander and Base Detachment Commander since I have been here, yes, sir.

Q. Well, how does that govern the relationship between yourself, Colonel Kilkowski, and 104th Squadron? A. Well, all I can say is that we are partners in trying to get a first-class outfit; general terms. I have no command authority over him. He has no command authority over me.

Q. And by use of the term "partners" would you explain what the partnership consists of? A. A team. He is working, trying to make a top outfit. I am working to try to see if I can help him with my knowledge, supposed to be up-to-date knowledge; up-to-date knowledge. The reason assigned there is every three or four years when I leave another man will come in and take my place and he will definitely be up-to-date on more modern techniques than I am.

Q. Now, exactly what duties have you had and what assignment since you arrived in January of 1958? A. I have been assigned at one duty as an Air Force advisor to 104th Squadron.

Q. And what in general have been your activities as advisor of the United States Air Force to the 104th Squadron? A. Okay. I am on Standardization Board—

Q. Pardon me. Standardization? A. Standardization Board. A member of the Standardization Board. I am a member of—

Q. May I interrupt you to ask you what duties do you have on the Standardization Board? A. On the Standardization Board I am a member. Otherwise if something new comes up, a new type of problem that we

have to decide as a standard, a squadron SOP, Standard Operating Procedure, I will sit in on the meeting and—

Q. By "Standard Operating Procedure" you mean of the 104th Squadron? A. Yes, sir, strictly 104th. I like to think that they will listen to my words when it comes my turn to give my opinion on it. They can, or they can disregard it. It is up to them.

Q. Who are the other members of this Board? A. It would be Flying Training Supervisor, the Operations Officer and I believe the Commander and then maybe one or two others that I am not sure and, for instance, let's see Standardization Board, it would be the Flight Leaders also, each Flight Leader.

Q. Was that true in May of 1958? A. Yes, sir. These Boards change. Names change, except I don't change on them.

Q. Well, these men you have indicated by title, are they likewise members of the United States Air Force like yourself? A. No, sir. Now, back off. They are members of the Air National Guard, United States Air Force.

Q. And who appoints them, Major? A. Federal Recognition Boards.

Q. Of the United States Government? A. Of the Guard Bureau, as far as I know. I am not too detailed in their exact methods. They get their promotions, and so forth.

Q. That would be then from the office of the Chief of the National Guard Bureau? A. I couldn't answer that. I don't know.

Q. I see. Now, what would some of your other duties consist of? You told us about the Standardization Board. A. I am instructor-pilot in each type aircraft they have at the field. I am an instrument-check pilot. I am the test control officer for the State of Maryland.

Q. What are the duties of a test control officer? A. Airman upgrading through the level from OJT to three,

five and seven levels. This is the Air Force practice that is carried out in the Guard. Certain ratings before they can get promoted they have to be certain ratings on three levels, OJT, generally type of man. A five level, he is qualified to work on the equipment. Well, say, for instance, he is a mechanic, a jet mechanic. He is fully qualified to work on an airplane but if he wants to get Master Sergeant, for promotion, and so forth, he works on up through seven level which includes supervisory thing on his test, and we give all this testing, which is standard Air Force testing. We administer that, send it through the Test Control people at the Air Force. They score it.

Q. That is United States Air Force? A. It is United States Air Force in this case.

Q. Do you rate them, Major? A. I do not. They are scored. Amarillo, I believe.

Q. Is that a branch of the United States Air Force? A. Yes, sir.

MR. MUDD: OJT is on job training.

THE WITNESS: On job training.

Q. (By Mr. Galiher) Do you know Captain McCoy? A. Yes, sir.

14 Q. Did you first meet him when you came here to the Harbor Field in 1958? A. Yes, sir.

Q. What contact, what relationship have you had with him? A. He was the—now, the exact title I don't know, but he was the officer in charge—that is the way I got it—of our Aircraft Maintenance and—

Q. When you say "of our Aircraft Maintenance"—A. 104th, when I say our.

Q. You mean United States Air Force? A. Of the 104th Squadron, my Duty Station.

Q. Please continue. A. In that capacity I have inspectors work for me that advise—or they are not inspectors; advisors, and it may be—there is one of them I have that is a Maintenance Technician, or a Maintenance Supervisor

and he runs periodic checks to see how different sections of the shop are going and if there is something that is not quite up-to-date then I go in and talk to them and ask them what they think about this problem, "Can you go  
 15 along with this? I think maybe you should, if you can," and try to talk it out and help them, point up any shortcomings or any way they are doing it not quite up to Air Force standards and that is about it. It is a general contact.

Q. Have you ever been in the United States Air National Guard? A. No, sir. You mean have I been a member of the Air National Guard?

Q. Yes. A. No, sir.

MR. PETTIBONE: I am going to have to make the same objection to the form of the same question again, Mr. Galiher. It is not the United States Air National Guard.

MR. GALIHER: Air National Guard of the United States.

MR. PETTIBONE: No objection if it is so stated.

Q. (By Mr. Galiher) Did you have any other duties, Major, that I have interrupted you and prevented you from discussing for us? A. Let's see. I got through Instrument  
 16 Check Pilot. We have a manual listing and I—we have a manual listing and I can't quote all of them.

Q. Where did the manuals for maintenance of the T-33 plane come from? The Air Force? A. Put it this way: I think they come from the Air Force.

Q. That also includes Operations, does it, Major? A. Operations of the T-33?

Q. Yes. A. No, sir. Well, wait a minute. Operations come under 60 series, which are Air Force, or Air National Guard Regulations. Air Force Regulations.

Q. United States Air Force Regulations?

MR. PETTIBONE: Just a moment. As counsel for the witness, in which capacity I now serve—

MR. GALIHER: I understand your objection. I am trying



to cure it. Would you go back and read the last part of his answer?

(Testimony read by Reporter.)

Q. (By Mr. Galiher) Air National Guard of the United States or Air Force Regulations?

MR. PETTIBONE: Well, by your question what do  
17 you mean by "operations"? Are you referring to  
whether the airplane will be flown, or that sort of  
thing, or referring to everything else?

MR. GALIHER: I am referring to what he referred to when  
he called it 60 series.

THE WITNESS: Rules and Regulations. That is what I  
meant when I said 60 series.

MR. PETTIBONE: You can answer his question.

Q. (By Mr. Galiher) Major, where do the Operations  
and Maintenance Manual that go with the airplane come  
from? A. Maintenance Manuals, I believe, come from the  
Air Force. I don't know what you mean by "Operations  
Manual".

Q. Well, I gather that you are covering exactly what I  
have in mind with your answer. Where do you send your  
reports to your superior officers, Major? A. Fourteenth—  
hold off a minute. My direct command lies with Colonel  
Peters, Wing Advisor, 113th Wing, and then through 14th  
Air Force at Warner Robbins, Georgia.

Q. (By Mr. Galiher) Of the United States Air Force? A.  
They are Air Force people, yes, sir.

Q. When you are having trouble understanding  
18 my layman's language, perhaps I had in mind the  
Pilot's Handbook. A. The Pilot's Handbook dealing  
with operation, emergency operation, and so forth, with  
each aircraft that is on the field, comes also through Main-  
tenance, which is I believe, Air Force, comes from Air Force  
people.

Q. United States Air Force? A. I believe it comes from  
the United States Air Force.

MR. DAVIDSON: May I ask—

THE WITNESS: Air Force Supply.

MR. DAVIDSON: Mr. Pettibone, at this point I have been wanting to ask through you if we can see copies of the T-33 Manuals or Handbooks in force at that time, May 1958.

MR. PETTIBONE: That question came up before, in February, and it is a matter concerning which I don't personally have knowledge or information to give you an answer. I recollect that Major Robert Prince who was here with me at that time said that he was going to look into it to see what manual or parts of which manuals are available in the Pentagon; that is to say, which ones they have and that he would be glad to make available to you and would make available to you whatever they actually have there, 19 and I have lost track of that matter since that time, so I don't know what he has been able to find or whether he has turned it over and all I can say for the moment, since he is not here himself today is that I will be glad to make a note of it and next week when he is back I will take it up with him.

MR. DAVIDSON: All right, sir. Then we will follow it up through you then.

MR. PETTIBONE: Yes. I think there is some kind of a problem and I remember him mentioning there is some kind of a problem. The manual, part of it, they don't have it, or it has changed so much, or something like that. I'm not sure what it was.

MR. DAVIDSON: If you could make it available to us, what they do have governing operation and maintenance at that time—

MR. PETTIBONE: I will make a note of it right at this time and I will take it up with him first thing next week and then we will let you know as soon as we can.

Q. (By Mr. Galiher) Major, did you make certain that the pilots of the 104th Squadron had both a rating and an actual pilot's status before they were permitted to fly? A. No, sir.

Q. Did you have occasion to instruct the pilots? A. Do I have occasion to instruct pilots?

Q. Yes, or did you in May of 1958? A. Yes, sir.

Q. And in what respect do you instruct them? A. In one, as I have already stated, would be instrument checks and you can say in any phase, starting in any phase of flying operations.

Q. Safety phases? A. Any phases. Weapons, anything.

Q. And did that likewise apply to Captain McCoy? A. Did I instruct him?

Q. Yes. A. No, sir. That I might instruct him—

Q. You had authority to instruct Captain McCoy and the other pilots? A. Do I have authority to instruct?

Q. You had authority to instruct Captain McCoy  
21 and the other pilots? A. No. I can only fly with them, if it is in concurrence with either of these two—with Kilkowski at that time.

Q. You have reference to the partnership that you mentioned? A. Yes, sir.

Q. Had you reached the conclusion that a pilot was not qualified to operate a plane what would you do?

MR. PETTIBONE: Could I ask that that question be made a little more specific? A pilot might not be qualified to operate a plane for a variety of reasons. He might have a leg cut off in a plane accident. He might be rip-roaring drunk some night.

MR. DAVIDSON: He referred to the facts he gave them their checks.

MR. GALIHER: Well, I will accept everything you have said, and I am speaking generically.

THE WITNESS: Well, would you pin it down?

Q. (By Mr. Galiher). If you felt that pilot A was not  
22 qualified to fly a T-33 plane what would you do, Major, regardless of the reason? A. All right. We will assume that I observed something that I definitely didn't think he should fly, and it looked like he was going to fly. Is that what you are getting at?

Q. Yes, sir. A. The first step would be to talk to the Operations Officer and bring this, my feelings forward to him and normally that would take care of it. He would, if there was any reason he shouldn't fly, because he didn't know it, as quickly as I bring it to his attention he checks it and then right, that is it. He wouldn't fly.

Q. He would always follow your— A. Not necessarily. If there was a difference of opinion which there could be, then ask him permission to see the Commander and ask the Commander and he would probably tell him.

MR. DAVIDSON: I couldn't hear that.

Q. (By Mr. Galiher) He would what? A. He would probably cancel the flight.

Q. On your recommendation? A. On recommendation, right.

23 MR. GALIHER: I think that's all I have.

MR. WOLCOTT: I'd like to ask a question, sir.

Q. (By Mr. Wolcott) Is there any periodic review in connection with the pilot's record? A. Which record are you talking about?

Q. Well, the record of a pilot like Captain McCoy? A. You mean flying record?

Q. Yes. A. Flying records. Is there—off the record—

Q. Periodic review conducted. A. This is covered by, I believe, Air Force Regulation 60-4, which is once a year they do have a, take a check flight, also an instrument flight, check flight.

Q. And do you participate in that? A. Yes, sir.

Q. Now, do you check any other aspect of the pilot's record except his proficiency in operating the aircraft? A. That one is strictly 60-2; 60-4. My job description says that I will check those—60-2 and 60-4, that those compliances are met.

24 Q. In other words, the pilot's character as well as his— A. That is only on flying. Not character.

Q. Only on flying, that's all? A. Yes.

Q. All right. Thank you. You also checked his past flying record? A. No, no.

MR. WOLCOTT: All right. That's all I have.

Q. (By Mr. Galihier) A few minutes ago I was asking you about a situation which might exist if you concluded that a pilot for reasons which you had decided on was not qualified or should not be permitted to fly at a given time. A. Yes, sir.

Q. And you explained to us what you would do. Would you also make a written report of that? A. No. Let me qualify that. No.

Q. Under no circumstances? A. Now you have left a wide field open. I can't—under no circumstances—because I don't know quite what you are getting at.

Q. I take it you have never done it since you have  
25 been there, since 1958 then? A. Never done?

Q. You have never submitted a written report where you have decided that a pilot should not be permitted to fly and had him cancelled? A. I believe I have. Yes, sir, I have made those reports. I can distinctly remember one that he was not to fly again until he had had a check rate and certain other qualifications were met, and a suggestion to him. I had wrote it up on a 60-4 check.

Q. Do you recall the name of that person? A. Yes.

Q. Who was it? A. Lieutenant Shilton.

Q. And where did your report go? A. It was part of the 60-4 check, I believe; or it was one of the CONAC mission forms; one or the other. I forget which one it was.

Q. It was then, I believe, transmitted to the United States  
26 Air Force? A. No, it did not leave the office, but it was on a record that the United States Air Force can check when they check it annually.

Q. Was that incident one where the pilot was about to take off? A. No, sir. It was a flying safety on the range, on the gunnery range. I thought he was going too low over the target, was liable to get hurt.



Q. I see. Then you took steps which were acquiesced in by the Commander? A. Yes. Now wait a minute.. I think you asked the question: I took steps that was agreed on by the Commander, that he agreed that we carry it through this way. Is that the question?

Q. Yes. A. It didn't get to the Commander. It got to the Operations Officer and it was all settled there.

Q. Was he later restored to a flying status? A. He was not taken off flying status. My recommendations were that he not fly again without further dual recheck. He continued to fly, but he had more dual.

Q. Well, who gave the dual and recheck thereafter? A. Give you a name? To be absolutely accurate I can't give you a name.

Q. Well, can you give the organization— A. Yes. I believe his flight leader, his flight commander, I believe gave him that dual.

Q. Flight Commander of the 104th Squadron? A. We have five flights in the 104th Squadron. One of those Flight Commanders that he was assigned under, I believe he is the officer that gave him that dual.

Q. You don't remember that man's name? A. I don't remember the name, but it is a matter of record.

Q. Anyone else that you can recall? A. No, I don't believe I have ever failed any, right besides that one.

Q. Since 1958 has there been any indication brought to your attention of any reckless flying on the part of the 104th Squadron as a result of which you took action?

MR. MUDD: Objection.

MR. PETTIBONE: I am going to ask the witness not to answer that too unless you can indicate to me in some way how that would be material and then after I have a chance to refer to him, whether there is any privilege nature to his answer I have to instruct him not to answer. Now is that possibly material?

MR. GALIHER: Well, it has to do with the relationship

between the United States Air Force and the National Guard.

MR. PETTIBONE: I fail to see where there is any relevancy in any event, no matter what the answer is, as to what has happened since 1958 to the relationship which existed on May 20, 1958.

MR. GALIHER: Now you have noted your objection, Mr. Pettibone. Are you instructing your employee not to answer—your associate I should say. Excuse me.

MR. PETTIBONE: Off the record.

(Discussion off the record.)

MR. PETTIBONE: He may answer your question, if he can.

THE WITNESS: Would you read it?

(Question read by Reporter.)

THE WITNESS: No.

29 Q. (By Mr. Galiher) Did your answer include not only the Squadron but any of the pilots thereof? A. Yes, sir. I just filled out a yearly flying safety award for the Unit and I was trying to think what I wrote up there and one of the paragraphs was that we had had no violations, not only from my own end but from anybody else's end that might have observed these people flying across the country and around. There was no violations.

Q. (By Mr. Galiher) And your answer "no" included from the time you arrived at the Base up until and including the present? A. I will—yes. Let's see. Yes, I will qualify that to say from the time I arrived at the Base.

Q. (By Mr. Wolcott) What is your procedure where you find that a pilot is given to reckless flying? A. If I am flying with him and he is given to reckless flying—

Q. Not when you are flying with him. When you know about it, where he has the reputation—A. That is all covered in regulations.

30 Q. What regulation is that? A. I couldn't quote it. It would be if he is observed. Well, now, wait a

minute. It might not be covered by regulation. For instance, if somebody observed an airplane in some fairly remote territory and called the Squadron, the Operations Officer with whom he would be normally channeled; they might have said, "We saw a jet. He was flying low," or something like this, and from the Operations Officers viewpoint there is only one jet up and they get enough of the markings that he might say, "That is a real good chance that that was my boy," or we will say that they get the numbers, but it wasn't a policing agency.

I would go directly to the Commander; nobody else involved. From my association with Major Scott and Colonel Kilkowski, if this happened, I'd have to honestly say I believe they'd put him before a FEB, Flying Evaluation Board. He would have to show cause why he could continue to fly.

Q. What is a Flying Evaluation Board, sir? A. It is a Board of Officers convened to take testimony from the pilot, go over his past record and make a determination, make recommendations to Air Force that he be eliminated from flying or carry on in his present status; one or the other.

31 Q. That is a United States Air Force Board, I take it, sir? A. It would be in this case a Board of Air Guard Officers of which one Air Force member would be on that Board, which would be myself.

Q. (By Mr. Galiher) You mentioned an award that was given the 104th Squadron? A. An application for an award.

Q. For safe flying. Will you tell us— A. Under a certain regulation they have 14th Air Force has award periods from 31 March of, I believe it is, 1st of April through 31st of March. In this past period that this happened we had no accidents or incidents and under 14th Air Force Regulation they are to be nominated, of which it is the job of my shop, and I nominated them for award.

Q. You nominated the 104th Squadron to the United States Air Force for this award? A. For Flying Safety Award.

Q. And I assume that meant that you recommended—  
A. That's right.

Q. —to the Air Force that they receive this  
32 award? A. That is correct.

Q. You mentioned a few minutes ago that you had technicians or that there were technicians which worked for you, or did certain work for you. A. Yes, sir, I have two Air Force men. They are both Tech Sergeants that are assigned to my office and work under my direct control. One is an administrative specialist. He handles my administrative work in my office. He also advises and tries to help the administrative section of the 104th, 104th Air National Guard Unit. The other man is a maintenance technician and his sole job is advice on maintenance activities.

Q. Maintenance activities concerning the planes— A. Yes, sir.

Q. —assigned to the 104th Squadron? A. To the 104th Squadron.

Q. Planes of the United States Air Force? A. Sir, that is a problem I have heard kicked around ever since this accident and I have never heard one way or another who the airplanes belong to, so I certainly couldn't answer this.

Q. What is the name of this maintenance man who  
33 has been there since you have been there? A. Sergeant Baldwin.

Q. Do you remember his first name? A. I do, but I can't think of it right now.

Mr. Davidson: Is he there now?

The Witness: Yes, sir.

Q. (By Mr. Galiher) And the other Sergeant are both in the United States Air Force like yourself? A. Yes, sir.

Mr. Galiher: I think that's all.

Mr. Mudd: I'd like to ask one or two, if I may.

**Examination by Mr. Mudd**

**Q.** Major Britton, since your assignment to the 104th have you had anything to do with the payrolls or payroll records of the Squadron? **A.** The Federal payroll of their drill days and their two weeks summer camp, yes; I sign and verify those payrolls.

**Q.** Have you conducted any lectures to the Squadron? **A.** Yes, sir.

**Q.** What have they been on? **A.** A large percentage of them have been on Fighter Weapons and Tactical Work; some on Flying Safety.

**Q.** Since 1958 have you served among several capacities as an Instructor-Pilot? **A.** Yes, sir.

**Q.** Have you served as an Instructor-Pilot since your arrival in 1958? **A.** Yes, sir.

**Q.** Who did you instruct? Not names, but by personnel or groupings. **A.** This gets a little technical. I can say I instructed some of our new people that just graduated from school, such as Shilton, but whether I remember the log IP in the pilot column which goes down as IP, I don't know if I did or not, but most of them I do.

**Q.** But in any event you instructed personnel of the 104th? **A.** Yes.

**Q.** Does the 104th have its own instructor-pilots in addition to yourself? **A.** Yes, sir.

**Q.** Do they serve and perform the same activities and functions when acting as instructor-pilot as you do when you act as instructor-pilot? **A.** Yes, sir. For instance, they instruct me sometimes.

**Q.** In what type of aircraft do you instruct? **A.** The F-86H, C-47; and it has been a year last November, I believe the 28th of November, 1958 since I flew the T-33.

**Q.** You did though at one time instruct on the T-33? **A.** Yes.

**Q.** Have you served on any Federal Recognition Board since your assignment to the 104th? **A.** Yes.



Q. Would you explain what you mean by the term Federal Recognition Board as used— A. I can remember two cases. One was Captain Cuttaire, or Warrant Officer Cuttaire. The other one was Lieutenant of Communications, I believe.

Q. Excuse me. I didn't understand. A. Lieutenant of Communications. I don't remember his name.

36 Q. Lieutenant of Communications? A. I don't remember his name. When all requirements are met to fill a slot in the TO—

Q. Now you are talking about a slot in the TO of the 104th? A. Of the 104th Military.

Q. Right. A. Then they get approval from the Guard Bureau first.

Q. Which Guard Bureau? A. There is only one Guard Bureau. Pentagon.

Q. Right. That is in the Pentagon? A. When all paper work is okay, they have met all requirements for the Guard Bureau, then they hold Federal Recognition Board, of which I am the president.

Q. And who are the other members of the Federal Recognition Board? A. They change from time to time. I think they put them on for maybe six months or a year at a time. I couldn't tell you.

Q. Who are the current members? A. I don't know that either.

37 Q. Who were the members in 1958? A. I don't remember that either.

Q. Do you remember whether they were members of the 104th? A. They were.

Q. And what was the purpose of the meetings of the Federal Recognition Board? A. In the case of Warrant Officer Cuttaire, he filled a slot as Captain. We checked his record, background, physically, moral, all known information on the gentleman and concurred that he should be Captain to fill the slot. This also happened in the case of the man in Communications.

Q. And to whom would you send the decision or conclusion of the Federal Recognition Board? A. My administrative Sergeant sends it out. I don't know where it went.

Q. To whom did he send it? A. Now wait a minute. Back off. Correct that last statement. The First Sergeant of the 104th sent it out and I don't remember how it was addressed.

Q. Do you know to whom it was sent? A. No, I don't.

38 Q. What agency it was sent? A. I do not.

Q. Who selects the Federal Recognition Board? A. I believe the Commander of the Squadron. I believe that is the way it is done. I don't know for sure.

Q. And you currently are the president of the Federal Recognition Board? A. I think in my CONAC Manual that is one of the directives, states he will be the president; the Air Force Advisor will be the president.

Q. Do you or anyone under your direction conduct inspections of the facilities, equipment of the 104th? A. Informal inspections, yes.

Q. Are they done periodically? A. Yes.

Q. How often are they done? A. Now, I will qualify that last question. In some sections they are done periodically every six months. In other sections, like operations, it could be daily.

Q. Are reports made as a result of these inspections, either periodically or daily? A. Some are. Some aren't. If it is extremely good we write it up and tell them about it. If it is extremely bad we write it down and put it on the record.

Q. To whom are these reports sent? A. They are filed in my office. The report is sent—a copy of the report is sent to the Commander of the 104th.

Q. Are copies sent to any other person or agency? A. Another copy in my file, and that's all.

Q. Do you turn your file over at the end of a year or the end of a period to any other person superior, or agency?

A. The files on the written advisories that go to the Unit are on file, can be inspected and usually are by our once a year inspection. Our office is inspected the same time the 104th is inspected by the Air Force.

Q. You say the Air Force inspects your office? A. Yes.

Q. And is that done once a year? A. Once a year.

Mr. Mudd: That's all I have.

Mr. Davidson: I have a question or two if I might.

40

### Examination by Mr. Davidson

Q. You mentioned something about instructing these men, the pilots, and lecturing to them, Major. Might I ask whether the lectures you gave to the men, or some of them were given prior to May 20th, 1958, referring of course to the personnel of the 104th Fighter Squadron, but I believe that prior to May 20th I had given several lectures on Air to Air Weaponry Work.

Q. Did you during that period, so far as you can now remember, also instruct with reference to Tactics and Safety? A. Yes, sir.

Q. Can you tell us whether in your lectures you reviewed with the pilots the air space in which they were permitted to fly the T-33? A. No, sir. To the best of my knowledge I did not. I have complete faith and confidence in our Operations Officer. Almost any officer out there can give a good job on that. I thought I had and I still think at the time much more knowledge in Weaponry Work, just coming from Las Vegas. The last year I was there I was  
41 Base Officer. Prior to that I had been in Weapons Work for seven years. My lectures for the first year, through all of 1958, were, at least 98 percent on the actual techniques of weapons delivery.

Q. Do you know whether any of the lectures had anything to do with the operation of the T-33 jets in or through commercial airways? A. With the exception of an instru-

ment check I don't believe I have ever gotten involved with the T-33.

Q. Do you know whether you ever discussed the basic proposition or rule of see and be seen between aircraft in any of the lectures to these men? A. Would you read that?

(Question read by Reporter.)

The Witness: Whenever I or any observed pilot as a flight leader—when I say “observed pilot,” that I have observed in the last two years—well, possibly when I observe them they give more detailed instructions than they do otherwise, I don't know, but I have never observed any flight going out without the standard phrase, and this is something we have used too long, I know, but “Keep your head in the swivel and look around.” This is daily—  
42 multi-daily. If you fly four times a day it is done four times a day.

Q. You made some reference to your CONAC Manual. Will you state for the record what those letters stand for? A. Continental Air Command.

Q. Published by the United States Air Force? A. Yes, sir.

Q. One more thing. You mentioned that some of the inspections were done or could be done daily. Could you tell us the nature of those inspections that might be done daily? A. The term “inspections” is a little misleading. The inspections are semi-annual that we write up and they get a copy of. We use the word, both the Guard and myself, “Advisories” a lot more. If I hear from the radio or something, on my car coming back from lunch that the wind is coming up to 40 knots, or something, in the afternoon I immediately go check with them and say, “Do you know the wind is coming up?” They may have gotten the word or they may not. If they have they pull the gooney bird in. It may be two or three weeks I don't see anything I can make any comment on. I wonder how I can earn my  
43 pay, and then other things you see you can make comments on, or maybe streamline or maybe make

it run a little easier, and improve, and of course, there is always personalities in on it.

Q. All right. A. I may think a problem is quite a problem and maybe it isn't a problem.

Q. Did you have any responsibility in this area as part of your work as the Air Force Liaison man with respect to pilots in the Air National Guard of Maryland maintaining proficiency in the flying and use of these planes allocated by the United States Air Force to that Base? A. I think I know what the terms "liaison" means. It is a term that you only hear used, and I will use it once in a while to a civilian—

Q. That is the least important part of the question. A. —that doesn't understand—

Q. So you can forget about that. I am trying to find out what your interests or responsibilities were, if anything, if any, in connection with this matter. A. My interest, as far as flying safety—

Q. In seeing that these pilots who are operating  
44 and flying these United States Air Force planes allocated to this Base, in seeing to it that these pilots had and maintained proficiency as pilots. A. That is, in my estimation, somewhere around 70 percent of my job.

Mr. Davidson: All right.

Mr. Mudd: I have nothing further.

#### Examination by Mr. Pettibone

Q. Major Britton, what was the date when you were assigned as Air Force Advisor to the 104th Squadron? A. The date I believe was the 28th of January. This was not the date I started to work, however.

Q. Well, what was the date when you started to work then? A. I would estimate around the 15th of March. Did I say the 28th of January?

Q. The 28th of January I believe you said. A. I believe that's right. It would be about the 15th of February then.



Q. In 1958? A. Yes, sir.

45 Q. Well, you were assigned as Air Advisor to the Unit then before you actually began work as such, is that it? A. I hate to tell a bunch of good taxpayers all of our secrets. When you arrive to a new Base, I immediately check in, see what their requirements are. I talked to Colonel Kilkowski for maybe two hours, met some of the officers and then politely asked him for about ten days off to get located, find a house for my family, and so forth, and that was it.

Q. Well, then between the time when you actually began to perform your duties as Air Advisor and May 20, 1958 did you ever have any occasion to make a flight with Captain McCoy? A. To the best of my knowledge I did not fly in the same formation, or I know I didn't fly a T-bird with him or in the same formation.

Q. Well, I was referring to flying in the same plane with him. A. No, sir.

Q. Did you fly any formation with him where you could observe his flying the aircraft? Did you on  
46 any occasion observe him fly any airplane during that period of time? A. To the best of my recollection, no. However, let me qualify that. In the 86 I flew, oh, possibly two or three formation rides before I began to know who any of the people were, with 36 pilots in the outfit. So that it could be possible, but I don't think so. I don't know.

Q. Well, in other words, if he had been one of the pilots in one of those formations you didn't know at that time. Is that what you mean? A. I don't think I ever flew with him. I'm sure I didn't.

Q. As Air Force Advisor to the 104th Fighter Squadron have you generally performed the duties for an Air Force Advisor as outlined in Section 2 of the Continental Air Command Manual 45-4? A. What does Section 2 refer to?

Q. Air Force Advisors. A. There are several sections of that book, I believe.

Q. Section 2 refers to Air Force Advisors. A. As far as any part of that manual, yes, I think I have followed that very well.

Mr. Wolcott: I ask that manual be marked for identification, please.

Mr. Pettibone: No, I am not going to ask him to identify it.

Mr. Wolcott: Will you give the complete title?

Mr. Pettibone: Are you going to ask for its production?

Mr. Wolcott: Well, certainly.

Mr. Pettibone: Off the record.

(Discussion off the record.)

Mr. Pettibone: No more questions.

Q. (By Mr. Davidson) Major, may I ask you this question. Are you seated here at this hearing table today wearing a uniform of what branch of the military service? A. United States Air Force.

Q. And is that a standard uniform of the Department that you are wearing? A. Class A uniform.

Q. What insignia does it bear at this moment, sir? A. Major.

48 Q. Will you describe it? A. Major leaves on the shoulder, pilot wings above the left breast, two U.S.'s.

Q. Can you tell us whether that uniform and the insignia which it bears here is exactly the same as the type of uniform worn by the other men with whom you worked in the Maryland Air National Guard back in the first part of 1958 and particularly where the men or man held the same rank you do. Is that clear, sir? A. Not the very last, the very last couple words.

Q. All right. If there were another man in the Air National Guard of Maryland who was also a Major, was his uniform in all respects to your knowledge identical with the uniform and the insignia which you now wear? A. Yes, sir. It might be tailored a little better, a little cleaner.

Q. Yes, and as to the other officers in the Maryland National Guard, except for differences in rank, if they were of a higher or lower rank than the rank you bear, sir, were their uniforms always the same as your except for the difference in the shoulder insignia? A. Yes, sir.

Mr. Davidson: Thank you.

Mr. Pettibone: Well, will the Reporter please mark this publication which is Continental Air Command Manual 45-4, United States Exhibit No. 12 for identification?

(Manual was marked United States Exhibit No. 12 for identification.)

Q. (By Mr. Wolcott) I'd like to ask the Major one question on that, if I may. I notice that that, Major, has a date 25 October 1958, and on the first page "This manual supersedes Continental Air Command Manual 45-4, 1 March 1957." Now, insofar as the description of the specific duties which is titled Paragraph 2, specific duties of the Air Force Advisor are listed below, could you look at it please and tell me if that is substantially the same as the manual which was in effect on March 1, 1957? A. Yes.

Q. So, in other words, they are substantially the same as those listed duties which were in effect on May 20, 1958?

A. Yes, sir.

50 Mr. Wolcott: Thank you.

(Examination of witness concluded.)

. . . . .

11

**Deposition of General Winston P. Wilson. Plaintiffs' Exhibit 11****Washington, D. C.****Wednesday, September 28, 1960**

Deposition of WINSTON P. WILSON, called for examination by counsel for Defendant, The United States of America, pursuant to notice, at Grand Jury Room No. 3, U. S. District Court House, 3rd Street & Constitution Avenue, Northwest, Washington 1, D. C., before Alfred F. Goldstein, a notary public in and for the District of Columbia, commencing at 10:00 o'clock a.m., when were present on behalf of the respective parties:

**For the Plaintiffs GLIEDMAN, MORGAN, LEVIN, DICKSON and JOHNS:**

Theodore E. Wolcott, Esq.,  
36 West 44th Street,  
New York 36, New York

**For the Plaintiffs CAPITAL AIRLINES and ESTATES OF MEYER AND BRADY:**

Richard W. Galiher, Esq.,  
1215 19th Street, N.W.,  
Washington 6, D. C.

**For the Plaintiffs GLIEDMAN and DICKSON (Maryland case only):**

Everett L. Buckmaster, Esq.,  
10 Light Street,  
Baltimore 2, Maryland

**For the Defendant JULIUS R. MCCOY:**

John H. Mudd, Esq.,  
10 Light Street,  
Baltimore 2, Maryland

12 For the Defendant THE UNITED STATES OF AMERICA:

Russell O. Pettibone, Esq.,  
3738, Civil Division,  
Department of Justice,  
Washington 25, D. C.

Allen Blumberg, Esq.,  
Civil Division,  
Department of Justice  
Washington 25, D. C.

Lt. Col. Robert A. Price, Esq.,  
Office of Judge Advocate General,  
Department of the Air Force  
Pentagon Building,  
Washington 25, D. C.

14

PROCEEDINGS

Mr. Wolcott: By stipulation among counsel for all of the parties, it is agreed that objection as to any of the questions shall be reserved for the time of the trial, except for objections as to the form of the question only, which shall be made at this time, at this proceeding.

It is also stipulated and agreed by the parties that copies of the deposition shall have the same force and effect as originals and that filing is waived. Signing is waived except that counsel reserves the right to first check the transcript for typographical and other errors.

Is that right?

Mr. Pettibone: It is all right, yes.

Mr. Mudd: Yes.

15 Whereupon,—

Winston P. Wilson

was called as a witness by counsel for the defendant The United States of America and, having been first duly sworn by the notary public, was examined and testified as follows:



## Direct Examination

By Mr. Pettibone

Q. General, would you give your home and business addresses? A. Home address: 4311 Loyola, Alexandria, Virginia; business address: National Guard Bureau, 2E326 Pentagon Building, Washington 25, D. C.

Q. General, will you tell us what your present position is? A. My present position is an Air National Guard officer, Major General, of the State of Arkansas, ordered to active duty for the purpose of appointment as Deputy Chief of the National Guard Bureau, with an additional duty as an Assistant Chief for the National Guard Bureau for the Air National Guard.

Q. When were you first appointed to this position? A. I was ordered to active duty in Washington in September of 1950, as Assistant Chief of the National Guard Bureau. I was appointed Chief of the Air Division in 1954. I was Deputy Chief initially in 1955. I was reappointed as Deputy Chief of the National Guard Bureau in 1959.

16 I have been in this office approximately ten years.

Q. And what are the principal duties which you have as Deputy Chief of the National Guard Bureau? A. The Chief of the National Guard Bureau, under the Reorganization Act of 1948, is the advisor to the Chief of Staff of the Army and the Chief of Staff of the Air Force on all matters pertaining to the Air National Guard. As the Deputy Chief of the National Guard Bureau, Deputy Chief to the Chief of the National Guard Bureau, I advise the Chief of the National Guard Bureau on matters pertaining to the Air National Guard. I am his agent as the Assistant Chief for Air National Guard of the National Guard Bureau, the other hat I wear, for promulgating, administering all programs and policies pertaining to the training, management, organization and financial support of the Air National Guard in the 50 states and Puerto Rico and the District of Columbia.

Q. As a result of holding this position, General, do you have knowledge of the National Guard organization generally throughout the United States and also of the methods of operation and its policies? A. Yes. As you know, the National Guard stems from Article I, Section 8, Clause 16, of the Constitution, which states, [because this is the basis of the organization of the National Guard, I would like to read that, because I think it is important]—

17 " Q. By all means, please do. A. Article I, Section 8, Clause 16, of the Constitution states, and I quote:

"Section 8. The Congress shall have Power To . . .

"16. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

Now, the militia, the name of the National Guard in other legislation was changed from militia to National Guard, in the Dick Act, in the National Defense Act, known through all the legislation right on up to the Armed Forces Reserve Act of 1952. In all of these laws it leaves to the states the authority of training militia under the discipline prescribed by the Congress, which is carried out by regulations, in the case of the Air National Guard, by the Secretary of the Air Force.

The Guard has two statuses, both a state and a federal status. At such times as the Secretary of the Air Force deems that there is a requirement for a unit in the Air National Guard, he advises the Chief of the National Guard Bureau. The National Guard Bureau then goes to a state and says, "We have a unit of such-and-such a type,  
18 which we would like to put in your state. Will you accept the unit?" The state either says, "Yes," or "No." If the state says they will accept the unit, then the

authority to organize a unit, the state status, is authorized under the regulations prescribed by the Air Force as to what a unit has to have to maintain, to get a federal recognition. The states provide, oh, personnel, facilities, and so on, and so forth. At such time as the state feels that they have met the requirements of the federal regulations, they call for a federal inspection to determine whether they have met these qualifications, and the federal government, through the numbered Air Forces, the Secretary of the Air Force through the numbered Air Forces, or any agency he designates, goes to the unit, makes the inspection and advises the National Guard Bureau that the unit has met the requirements under the regulations to meet federal recognition. A federal recognition certificate is issued by the Chief of the National Guard Bureau under authority given to the Chief by the Secretary of the Air Force.

At that time the personnel are eligible and the unit is eligible for the receipt of federal support.

Now, we have units located in every state, Puerto Rico and the District of Columbia. They are all different types of units and the units are based on the requirements of the active establishment in the United States war plan requirements.

19 Mr. Galiher: May I ask what that is that you are reading from?

The Witness: This is an excerpt from Article I, Section 8, Clause 16, of the Constitution.

By Mr. Pettibone:

Q. Do you have any command responsibility in the military sense over National Guard units in the various states by virtue of your position in the National Guard Bureau?

Mr. Galiher: You are referring to he individually, are you?

Mr. Pettibone: Yes.

Mr. Galihier: Or his department?

The Witness: Neither the Department of the Air Force nor the Chief of the National Guard Bureau has any command jurisdiction over the National Guard when it is in its state status. The only time the command jurisdiction falls with the Secretary of the Air Force and the federal forces is when the unit is ordered or called to active duty.

By Mr. Pettibone:

Q. Who does have command authority or responsibility over National Guard units when they have not been called to active federal duty? A. That is under the commander-in-chief of the state which normally is the governor of the state, which is the governor of the state when not in active federal service.

20 Q. Now, could you explain to us, sir, what it means for a National Guard unit to be called into active federal duty, perhaps by giving illustrations? A. Well, there are two ways that a unit can be in the federal status. One is that the President may declare a national emergency or the Congress may declare a national emergency. At that time the unit immediately goes to full federal control and leaves all state ties behind. There is one other section of the law that authorizes the President in his wisdom to call the National Guard to active duty in their militia status or state-National Guard status. He may do this at any time that he deems it necessary to augment the troops of the federal forces and during the time they are in a call, they are under the orders of the government, the promotions, and so forth, the personnel, although the federal government gives them complete direction, pace, and so forth. The only time the call has been used was in the Mexican War in which the National Guard was called to active duty and at that time, even though they were in Texas from all over the United States, they were under the state, they were still part of the state militia. The only

other time that I can think of a call is in the Little Rock situation, where, due to emergencies, the state had troops out one day and the federal government called them the next to do the opposite. When the President calls them, the President has priority for the units over the call of the governor.

21 Q. Do you know whether or not the 104th Fighter Interceptor Squadron of the Maryland Air National Guard had or had not been called to active federal duty on May 20, 1958? A. There was no call for active duty, call or order for active duty of the 104th at that time; no, sir. They were then in their state status.

Q. Who determines the location of units, headquarters of units of the Air National Guard within the United States? A. The determination as to the exact location within a state is left to the prerogative of the state officials, provided they meet certain criteria established by regulations of the Air Force.

Q. What is the manner and method of conducting the training of the Air National Guard in the United States? A. The training of the Air National Guard is a state function, as given to it by the Constitution, which I read, which has never been changed, that portion of it which states that they are trained in accordance with that prescribed by Congress authorizes the Secretary of the Air Force for his part in fulfilling this portion to describe or prescribe the training programs and training standards to which both the Army and Air Guard units will be trained to be eligible to receive federal support.

22 Q. Does the federal government prescribe standards in any way for the training of the Air National Guard and, if so, tell us in what manner and to what extent it does so? A. Yes sir. In fulfilling the Air Forces requirements based on the Constitution the Air Force is also charged with two functions pertaining to the Air National Guard. One is the supervision of training and the inspection of the units. The Air National Guard is furnished



from the active Air Force training standards training programs of which they are graded on annually by this inspection. In the supervision of training at each one of our Air National Guard bases we have an Air Force officer called an Air Adviser. He is placed there for the purpose of seeing that the units are following the prescribed procedures established by the Air Force for the training of Air National Guard units. He advises both the Guard and the federal agency as to the method in which they are trained.

The inspection function that is performed annually (and I believe the law says an inspection will be required once each twelve months at which time they will check the status of the equipment to see that it is maintained properly) includes checking the records of the units both personnel, maintenance and supply records. They go into every facet of the organization in a similar manner that inspectors make inspection of the active Air Force units.

Now, if a unit fails to come up to those standards, 23 and normally what happens is that the state officials are advised by the federal authority or the federal inspection that the unit will be placed on probation. They are reinspected at the end of their probation period and if they don't meet the standards again, they will then be withdrawn, their federal recognition will be withdrawn and at the time the federal recognition is withdrawn, federal support of the unit is also withdrawn.

Q. Does an Air Advisor to a National Guard unit or any of the inspectors, which you referred to in your statement, have any command authority in any way over a National Guard unit? A. They have no command authority at all. The command of the Guard unit is left with the state until such time as they are either called or ordered to active duty.

Q. Just what do you mean by "left to the state"? A. To the governor of the state, as the commander-in-chief when the unit is not in active federal service.

Q. Are there requirements of the federal government with respect to how often an Air National Guard unit will assemble for training each year and the extent to which it will participate in maneuvers or other exercises? A. The law very specifically states that a minimum of 48 training periods, which we call drills, plus 15 days active duty, unless the training is waived by the Secretary of the service concerned, must be performed.

24 Q. When members of the Air National Guard units participate in these training periods or exercises, do they receive pay and allowances or other financial benefit from the federal government? A. Yes.

Q. Would you explain how that works for us, please? A. A member of the Air National Guard or Army Guard or Ready Reserve unit, Class A unit of the Air Force Reserves, for each training period, receives one day's pay, basic pay. If he is on flying status, he receives flying pay, provided he is flying during the period or has so much flying time. He receives no allowances, such as quarters or subsistence. He receives his basic pay and longevity pay and has a flying pay if he is a pilot.

Q. That, I take it, would apply in the case of a rated flying officer? A. That is correct.

Q. Because of your position, do you know what status Captain Julius R. McCoy held on May 20, 1958, in the 104th Fighter Interceptor Squadron in the Maryland Air National Guard? A. He was a federally recognized captain of the 104th Squadron. He was also a captain in the Air Reserve Forces, and was a rated pilot, and on flying status.

25 Mr. Pettibone: Could I ask the reporter to read back that part of the answer that relates to the Reserve status of Captain McCoy.

[The portion requested to be read was read by the reporter.]

Mr. Pettibone: Off the record.

(Off-the-record discussion.)

**Mr. Pettibone:** On the record.

**By Mr. Pettibone:**

**Q.** When you used the term "Air Reserve Forces," in your answer to my last question, General, were you referring to Captain McCoy's status as a member of the Reserve of the Air Force as distinguished from Air Force Reserve status?

**Mr. Mudd:** Objection as to form.

**Mr. Galihier:** I object to this question. You are now cross-examining your own witness and asking him leading questions.

**Mr. Pettibone:** I will withdraw the question. I believe the objection may be well taken.

**By Mr. Pettibone:**

**Q.** General, will you explain what you mean by the term "Air Reserve Forces" as you used that term in your answer to my last question? **A.** Under the Armed Forces

Reserve Act (1952), they established a common reserve appointment, making all officers of the Air

Force Reserve and the Air National Guard having a common appointment as a Reserve of the Air Force. In the Air Force under this law you have two components, one is an Air Force Reserve and one is an Air National Guard. In doing that, prior to this act, a man had to be discharged from the Air Force Reserve if he got into an Air National Guard or he had to be discharged from the Air National Guard if he went into an Air Force Reserve. But under this law it gave a common federal appointment as a Reserve of the Air Force for all offices of both the Air Force Reserve and Air National Guard, which allowed transferrability between the two components without having to discharge anyone, be discharged from one or the other to join the other one.

**Q.** Where and how do the Air National Guard units receive their equipment, material and funds? **A.** If you mean by equipment aircraft, aircraft are furnished by the active

establishment to meet programs established by the Air Force. There is an annual budget which is prepared in my office. I defend the budget before reviewing authorities and before Congress. The appropriation of funds to pay for materiel support, parts, and so forth, necessary to support the Guard is funded from active Air Force funds. The financial support and the pay of the personnel is funded through appropriations appropriated by Congress for the support of the Air National Guard.

27 Q. What are the property and fiscal officers? How are they selected and appointed? And what are their duties and functions? A. Due to the fact that there is federal equipment and federal funds being apportioned or allotted to the states for the maintenance of the operations of the National Guard, under the law, there is one officer appointed in each state who is the United States Property and Fiscal Officer for both the Army and the Air National Guard within that state. He is normally recommended for appointment by the governor of the state. His application is reviewed as to his qualifications by the National Guard Bureau and if the National Guard Bureau finds that he is qualified, they recommend to the Secretary of the Army or the Air Force that this gentleman be called to extended active duty for the purpose of fulfilling the functions of the United States Property and Fiscal Officer within the state.

Q. Who was the USP&FO for the state of Maryland in 1958? A. I don't have his name.

Q. Do you know whether or not he was appointed, selected in the manner which you have just described for Property and Fiscal Officers generally? A. Regardless of who he is, that is the procedure that is used as established by regulations.

28 Q. When property or equipment is used to a National Guard unit, who has title of such property?

A. I would say that the title of the property actually remains with the federal government, but the responsibility

for maintaining the property to certain standards is a state responsibility.

Q. If property is lost, damaged or destroyed, are the states charged for it? A. There is a report of survey made on the equipment. If it is found by the board of survey that the responsibility was the state's, that the loss of the property was due to negligence or some such cause, the state is responsible for the cost of the property.

Q. How do you classify, in general, personnel assigned to the various Air National Guard units in the various states? A. We have two classes of personnel with officers and airmen. In addition to that we have a certain group known as air technicians.

Q. With respect to officers, do they have rank in the military sense? A. Yes, that is right. In other words, when the Air Force authorizes a unit to be organized in the Air National Guard, they have unit manning documents which are similar to a similar type unit of the active establishment, which calls for the ranks of a similar unit in

29 the active service. For example, a fighter squadron commander is a lieutenant colonel and in the Guard a fighter squadron in the active tactic fighter unit or Air defense unit is a lieutenant colonel. And the grades are established based on the functions he will do when he is in the Guard unit, the same as in the active duty establishment, so when the National Guard comes to active duty, they will be organized in the same manner as those in the active duty units. One portion of the Guard regulations says they will be organized in a similar manner as those units on active duty.

Q. How are these qualifications for officers in Air National Guard units prescribed or who prescribes them, perhaps I should say? A. The requirements for the Air personnel of the Air National Guard are prescribed by Air Force regulations and Air National Guard regulations. Where it is possible, the Air Force regulations are used in toto, but due to the peculiarity of the Guard being both a



state and a federal force or carrying a dual mission and having dual appointments, there are Air Guard regulations to supplement Air Force regulations. For officers of the Air National Guard, as the Constitution says, it reserves to the right of the governor to appoint officers. He may appoint any officer he desires, provided they meet a federal recognition board and are qualified under the standards prescribed by the Air Force for that grade and

30 This officer can be appointed in the state. He makes application for federal recognition. He goes before a board which is a federal board on orders from federal agencies. If he is found to meet the qualifications by this federal board, his application is forwarded to the Chief, National Guard Bureau, who forwards them to the Secretary of the Air Force, and he receives a Reserve of the Air Force appointment; that is, if he is not a Reserve officer. If he is a Reserve officer, under the common federal appointment, under the Armed Forces Reserve Act, and he holds, say, a captaincy in the Reserve, he can transfer over as a captain in the Air National Guard under his common federal appointment as a Reserve of the Air Force.

Q. Who actually makes the appointment of an officer in the Air National Guard? A. The initial appointment is by the state officials, if he is going to be a member of an immediately recognized Air National Guard unit.

Q. Does any federal agency or board require the appointment of any officer by the state officials? I mean is it possible for any federal agency or board to require the appointment of an officer by the state officials? A. I would say if a federal agency tried to appoint an officer in the Guard that was no acceptable to the Guard itself, it would be unconstitutional, because it reserves to

31 the governor the authority to appoint the officers. He can appoint whomever he wants to, but if he is going to receive federal pay, he has to meet certain criteria to receive federal pay.

Q. May the governor of a state appoint an individual who has not received federal recognition? A. Certainly.

For example, we have several adjutant generals of the State appointed at the grade of major general who do not receive any federal pay and are not federally recognized.

Q. Does federal recognition have importance or significance for any reasons other than pay purposes? A. Well, I would certainly say that other than pay purposes, it makes him eligible for receiving pay, it also makes him eligible to be a Reserve of the Air Force and subject to call by the President or call or order by the President to active federal service. If he had a unit that was not with people federally recognized, they could not be called or ordered by the President to active duty in an emergency, because the only time the President gets these people or the federal government gets control of these people is when they are ordered or called to active duty.

Mr. Galiher: I move we strike that answer as not responsive.

Mr. Wolcott: I will join in the motion.

32 Mr. Pettibone: Of course, I object to the answer being stricken. I feel it is responsive to the question.

By Mr. Pettibone:

Q. Is there a recruiting system of some kind that is utilized for procuring officers in the—well, officers and other personnel—Air National Guard units? A. The state is responsible for the recruiting of all personnel, officers and airmen for the Air National Guard.

Q. Do the states, do you know whether the states have a system that they follow in recruiting personnel for the Air National Guard? I don't mean to have you describe it to us, but tell us whether the states have systems for recruiting? A. Certainly. Each state has a system. You see, to maintain their federal support, they have to get certain numbers of personnel within certain periods of time to bring up their manning level. In other words, a unit is no good unless it has people. It is the responsibility of the state to see that it is manned properly. The state is re-

sponsible for the recruitment of officers and airmen personnel. I don't think there is any one standard by any state. I think it depends on the individual states, the unit commanders, and so forth, as to the method they use to recruit personnel.

Q. When an officer or airman has been appointed to the Air National Guard, who has control or command responsibility or authority generally over the individual in that status and how does that operate?

33 A. When not in the active federal service?

Q. When not in the active federal service. A. The state officials, normally the adjutant general, who is Chief of Staff to the governor, establishes the policies. The training standards are furnished by the active establishment and he normally, the the adjutant general will pass on his policies and personnel policies and training procedures to the unit commander and the unit commander will be responsible for the training of the personnel in the Guard.

Q. Are there any federal officers or agents or employees who have any authority or control over these individuals in any way when they are in this status? A. When they are not in active federal status, there are no federal agencies that have command jurisdiction over these people.

Mr. Galihir: What do you mean by command jurisdiction?

The Witness: Well, shall I answer that question?

By Mr. Pettibone:

Q. Yes; that is all right. A. By command jurisdiction, be able to order this man to do this job at this time. In other words, I am a commander in an Air National Guard unit, I say, "You fly this time, you do this work, you sweep this area, you wash this dish, you do this." If he doesn't, he is insubordinate to the commander and he has the consequences to pay. It is a direct command by issuance of orders to the individual with which he must comply.

34

Q. May an officer in an Air National Guard unit hold a rated flying status. A. Certainly.

Q. Does this affect his pay in any way? A. Yes, it affects his pay, because any officer who is on valid orders for flying, receives hazardous-to-fly pay, which is known as flying status and flying pay.

Mr. Wolcott: What kind of orders?

The Witness: Hazardous flying orders.

Mr. Wolcott: You said something like "ball of orders."

The Witness: Valid orders.

By Mr. Pettibone:

Q. Does the fact that he holds a rated flying status in any way change his status otherwise as an officer of the Air National Guard; that is to say, of other officers of the Air National Guard who are not rated flying officers? A. No; he normally can fill a position requiring a rated or non-rated position, either one, provided he is qualified, of course, in the job that he holds.

35 Q. I believe you mentioned, General, that in addition to officers and airmen the personnel of an Air National Guard unit also includes certain civilian employees. These, I believe, are called Air technicians; is that correct? A. That is correct.

Q. What is the general purpose or policy behind the employment of such civilians by the Air National Guard units? A. Air technicians are what we call the full-time civilian personnel who are placed there to maintain federal equipment and records to the prescribed standards of the Air Force that cannot be maintained by the normal personnel assigned to the active establishment, I mean to the active Guard unit.

For example, we have some 72,000 personnel, officers, and Airmen, in the Air National Guard. About one out of five, or 19 per cent are full-time civilian employees of the state. In addition to being civilian employees—

Mr. Wolcott: May I interrupt. You say of the state?

The Witness: That is correct.

Mr. Wolcott: Of the State Air National Guard?

The Witness: As a state employee.

Mr. Wolcott: I see.

The Witness: I am not talking about his National Guard status. I am talking about his civilian status.

36 Mr. Wolcott: I am sorry.

The Witness: Of this, 19 per cent, which amounts to some 13,000-plus, all of these personnel, with the exception of certain Grade-3 typists, must be military members of the organization. Some states require that all be military members of the organization. There has been some exceptions on the lower-grade typist, where we are unable to get military members of the unit to type. But in general, all of them were military members of the organization. This is necessary. These are the key personnel that do the maintenance. Sixty-five per cent of the technicians are in the maintenance, radar, radio, specialties, such as sheetmetal work, machinist, and so forth, that are highly skilled capable people in order to maintain the equipment. I each of these organizations we have certain officers who are also technicians, although the greatest bulk of them are Airmen.

In the officer position we have the base commander, the operations training supervisor, flying training supervisors, the maintenance personnel, the supply officers, the biggest bulk of them being Airmen. They are there for the purpose of maintaining the equipment. They are employed by the state. The state has the authority to fire and hire. The funds for the pay of these personnel is allotted to the USP&FO. We give them a maximum pay scale by job title, and it is up to the state to determine what pay he  
37 receives. They can either pay what is authorized.

In many cases many states do not pay the maximum that is authorized. They pay that portion that is comparable to the other jobs within the state for each type of job. In several instances the states augment the pay by adding purely state money to the federal money. We set the maxi-



mum, but the state can augment it. The USP&FO prepares the necessary vouchers on the pay, but the vouchers are paid by the orders that are issued by the state officials, and the amount of pay is that prescribed by the state officials. It cannot exceed the amount that has been established and given to the state for a specific job. It is just the same thing as if the federal government, through the National Guard Bureau, contracts with the state for the maintenance of this equipment and puts the strings as to how the people will be employed, in what type of jobs they will be employed.

This is a recommendation to the state, and it is up to the state to pay the maximum, and they are allowed so many man-years, and it is up to them to live within the man-years, and the money authorized by our regulation.

By Mr. Pettibone:

Q. Who supervises the daily work of their employees in their respective positions? How is that handled? A. Normally the adjutant general authorizes the base commander, who is his representative on the base, to do the supervision of officers and Airmen assigned to his base on  
38 state orders.

Q. When you use the term "adjutant general," whom are you referring to? Could you define that a little more specifically for us, please? A. Normally, in each state, except in a few, the military codes of the state determine that there will be an adjutant general and that is what it is normally called under their codes, which is the adviser to the governor on matters pertaining to Army and Air National Guard. He is the representative with whom we primarily deal. When I deal with the states, I deal with the adjutant general. In New York, they don't call him an adjutant general. They call him Chief of Staff.

In New Jersey they call him Chief of Staff. For all intents and purposes he is the same thing as the adjutant general, which is, by far, the bulk of the people in the states with whom we deal directly.

Q. What do they call him in the State of Maryland?  
A. He is called an adjutant general under the military code of the State of Maryland.

Q. Do you know who held the job in Maryland in May of 1958? A. Major General Milton Reckord.

Mr. Pettibone: Have you heard of him, Mr. Mudd?

Mr. Mudd: I have heard of him.

39

By Mr. Pettibone:

Q. Who establishes working conditions and hours of work and things related thereto for these civilian employees of the National Guard units? A. That is usually established by the adjutant general and passed down to the other people who do the supervision of the work for the adjutant general.

Q. In 1958 do you know whether or not the state of Maryland followed the general method of operation which you have just outlined for the various states? A. I would say that they did, yes.

Q. Who has authority to promote civilian authorities of the various National Guard units? A. The state officials, the adjutant general in this case, representing the governor, is the one who determines the grade and the status of the civilian employees within the state.

Q. Who has authority to discharge or terminate the employment of such civilian employees? A. I would say the adjutant general of the state issues the orders.

Q. Who gives these civilian employees their specific work assignments in connection with their employment? A. It is normally done under the policy of the state by the base detachment commander.

40

Q. Does any federal agency or department, through its own employees or agents, have authority to give work assignments to any civilian employees of these Air National Guard units? A. Definitely not.

Q. As a matter of fact, does any federal agency or department, through its officers or agents or employees, have

the authority to promote, discharge, control the working conditions and control generally in their daily work these civilian employees? A. No, sir.

Q. Are the Air National Guard civilian personnel included in the federal civil service retirement system and entitled to the benefits thereof? A. No, sir.

Q. Do you know whether or not the Air National Guard civilian personnel are covered by the provisions of the Social Security Act and entitled to the benefits therefrom?

A. They are, provided the state authorizes it.

Mr. Mudd: Just enter my objection, please.

Mr. Pettibone: Do you object to the form of the question?

Mr. Mudd: Yes. Well, actually I do not object to the form, but I think you are calling for a conclusion, a legal conclusion of a lay witness.

41 By Mr. Pettibone:

Q. Answer the question. A. What is the question?

Mr. Pettibone: Please read the question, Mr. Reporter.  
[The question was read by the reporter.]

The Witness: It depends entirely on the decisions within the state whether or not they will be included. Some states have systems where the Air technicians being state employees are covered under the state retirement plans. Most states, they are under the Social Security benefits.

By Mr. Pettibone:

Q. Federal benefits? A. Yes. Social Security.

Q. Are deductions made from civilian employees in Maryland, in the Maryland Air National Guard, for the employee's contributions, part of the contribution to the Social Security program? Do you know whether that is done? A. I am not familiar with that at all.

Q. I see. All right. Now, you have stated, General, that civilian personnel are normally, usually, members of the Air National Guard of the state in which they are employed. A. Yes.

42 Q. Do you know whether that is true in the State of Maryland? A. Yes.

Q. Was it true in 1958? A. Yes.

Q. Do such civilian employees also engage in the training programs of the Air National Guard for the military members thereof? A. Right.

Q. And in what status do such civilian employees participate in these training programs? Will you describe to us in general how this works? A. As we have stated, Air technicians are military members of the organization, and they are required to participate in the training programs as scheduled by the state officials for their 48 drills, their 15-day field training.

Q. Do they participate in their military status or civilian status? A. They participate in their military status as members of the military organization during unit training assemblies.

Q. Do they participate in their military status exclusively, as distinguished from their civilian status or not?

Mr. Mudd: Objection. Leading.

Mr. Pettibone: I will withdraw the question.

By Mr. Pettibone:

43 Q. May they participate in their training exercises in their civilian status. A. That is true.

Mr. Wolcott: The answer to that is "Yes"?

Mr. Mudd: True.

The Witness: Yes.

By Mr. Pettibone:

Q. Under what circumstances may they participate in their civilian status as distinguished from their military status? A. They can participate in their military training status, being technicians, normally at the discretion of the base detachment commander, either flying—normally it is in flying status, where a man is a pilot under all competent regulations of the federal government and if the

base commander so desires, he may participate in that, for which he receives no pay when participating as a civilian member of the organization.

Q. I believe in your earlier testimony you mentioned manning guides for civilian employees. Can you tell us just what manning guides are and what they provide and just what their purpose is? A. We establish manning documents or a guide to the states which gives the job de-

44 scription of the way the people should be employed, based on the type of equipment and the necessary workloads of the state in maintaining the equipment and the records in the said status necessary to qualify under the regulations of the Air Force.

Q. Could you classify the positions listed in the manning guides generally and by categories for us? A. There are normally two categories—a category for maintenance and a category for administration.

Q. What is the difference between those two? What are the characteristics of each perhaps? A. For example, your base detachment commander is normally the supervisor of the base for the adjutant general in which he is responsible to see that the equipment is being maintained, the records are being maintained, and that the work established for the unit is being accomplished on a day-to-day basis. Administrative procedures, such as clerks, typists, personnel records, are being maintained. Supply requisitions are issued, and so forth.

So they are either in maintenance or administration. Those are the two categories of personnel. In addition, you also have in the officers the base commander, a maintenance supervisor, an operations training officer, flying training supervisors, you have supply officers, and then in the Airmen you have all the necessary skills necessary to maintain the equipment.

45 Q. Have job descriptions been set up for these various jobs? A. Yes, it is in the Air National Guard Regulation 40-01, I believe.



Q. Do any of the job positions require that the person holding the position have the status of a rated flying officer? A. That is correct.

Q. Can you recollect any particular jobs which have this requirement? A. We recommend as mandatory the Operations Officer, the two flying training supervisors, the maintenance officer, he can be either way, he can or he can't. The supply officer may be rated, but he is not necessarily required to be rated, and all the officers assigned can be rated, but not necessarily, but we do require as a condition of their employment that the Operations Officer and the flying training supervisor be rated.

Q. What about a maintenance supervisor, is it required that he be rated? A. Not necessarily. We recommend that he be rated, but not necessarily as a requirement.

Mr. Wolcott: Is your recommendation mandatory?

The Witness: No, sir. We have 92 maintenance supervisors authorized in the Air Force. We have 56 of them rated. Thirty of them are not rated. The balance I don't know because I don't have a record.

By Mr. Pettibone:

46 Q. What about an aircraft maintenance chief? A. Aircraft maintenance chief can either be an airman or an officer.

Q. Is he required to be rated or is it desirable that he be rated? A. If he is an officer, it is desirable that he be rated.

Q. But not mandatory? A. Not mandatory.

Q. Did these provisions for these positions you just described apply in Maryland in the jobs there of the Air National Guard of that state in 1958? A. That is correct.

Q. First of all, how would an officer in an Air National Guard unit get a rating as a flying officer. What is such a rating and how does one get it? What is the priority? A. The only way he can be rated as a flying officer is to have completed the necessary flying school with the Air

Force or the Navy and be given a rating as a qualified officer who is required to participate in frequent aerial flights.

Q. Well, what is the rating itself? Is it something in writing? A. He is issued, once he completes the  
47 necessary training, flying status orders, which authorizes him to participate in frequent aerial flights.

Q. Are there different classifications in any way and under different categories or is this just one blanket thing a person gets? A. You have three different classes of pilot. You have a normal pilot who has had less than 10 years experience. You have a senior pilot with so many hours and more than 10 years experience. You have a command pilot with 16 years and so many hours of experience. But the basis of all of them, since 1950, they have to come from flying school through the flying training system of the active Air Force.

Q. Now, after an individual receives a rating in this manner, is that a lifetime privilege or does he have to do anything to maintain it and continue it? How does that operate? A. A member of the Air National Guard to maintain his pilot's rating must participate in frequent aerial flights to the extent that he must fly a minimum of 100 hours a year. So much of it must be instrument and so much of it must be night. If he fails to qualify during a year's time, he can be placed before a flying evaluation board. If it is the board's determination (and it is normally in the Air Guard a state board), that he remain on  
48 flying status or that he be taken off, they are reviewed by the National Guard Bureau who is acting for the Secretary of the Air Force, which either upholds or doesn't uphold the findings of the board. If the board's findings and representations are that he should be removed from flying status and they are concurred in by the Guard Bureau, then he is removed from flying status and orders are issued. If he is maintained on flying status after the board has made a recommendation, then his original orders remain valid.

Q. How does a person who holds a flying rating go about getting the number of hours required each year to maintain his rating in the manner you have just described? How does he do that? A. Normally an individual in the National Guard who is attending the 48 drills and 15-days field training gets 1/30th a month's flying pay for each drill he puts in. Four drills a month require him to fly for pay purposes 96 minutes. But to maintain his currency under Air Force regulations, it amounts to an average of 8 hours a month or 12 times 8 or 96, which gives him a little over 8 hours a month to maintain his proper efficiency in order to keep from having to appear before a flying-evaluation board. So much of this time must be night and so much of it must be instrument.

Q. Do these requirements which you have just described apply equally to civilian employees of the National Guard units, these air technicians which we have been talking about as to people who are not employed in such manner? A. They apply to all military members of the organization and since these technicians are military members of the organization, it applies to them in their military status, yes.

Q. Then does a civilian employee of a National Guard unit who holds a rating as a flying officer have to comply with these requirements the same as other members of the unit, the military members of the organization? A. Required to do the same as the military members of the organization.

Q. Did these requirements apply in this same way to Julius R. McCoy of the 104th Fighter Interceptor Squadron of the Maryland Air National Guard in 1958? A. That is correct, they did.

Q. So as the holder of a pilot rating, it was necessary for Captain McCoy to engage in aerial flights during that year in order to maintain his rating? A. Correct.

Q. Now, in order to maintain the rating, was it necessary for Captain McCoy to make aerial flights? A. Yes.

Q. Now, Captain McCoy in May of 1958 was a Captain of the Maryland Air National Guard assigned to the 104th Fighter Interceptor Squadron; is that correct, to  
50 your knowledge? A. Yes, to my knowledge, that is correct.

Q. And he was also a civilian employee of that unit at the same time, wasn't he? A. That is correct.

Q. Now, did he perform any aerial flights in May of 1958? A. Yes.

Q. Did he perform one on May 20, 1958? A. Yes.

Q. In order to fly as pilot an aircraft assigned to an Air National Guard unit, does an individual have to have any special authorization or license, shall I say, for such a purpose? A. I don't believe I quite got you. License?

Q. Well, what gives an individual the right to fly a military aircraft assigned to an Air National Guard unit? Can just any individual fly such an aircraft or is it restricted to certain individuals? A. It is restricted to only those individuals who have a valid flying status orders issued by the Air Force for the purpose of flying frequent aerial flights.

Q. Will that have any relationship to the appointment of the individual to status in an Air National Guard unit, for example? A. Certainly.

51 Q. What would that relationship be? A. In other words, you have established by your manning document certain positions that require a boy to have a valid flying status rating. In other words, if he is a tactical pilot holding a tactical seat in the organization, he has to have a valid pilot's rating. There are other positions that are authorized in the unit manning document, where an individual can be either rated or non-rated.

Q. Well, does he receive his rating by virtue of his assignment to a position in the military unit? A. Not necessarily.

Q. Is there any relationship, though, between the two? A. Based on his qualifications and the requirements for the job; for example, a supply officer, if he is qualified as

a supply man can be rated or nonrated. It doesn't make any difference. I think you have seen here quite a bit, they are taking a number of people off flying status, in the paper just the other day. All those people that they are taking off are not in tactical pilot seats, they are in other positions. I have people working in the Bureau who, by their job, are not required to fly, but they hold pilot ratings and, as such, they are authorized to fly. They have valid requirements to fly.

Q. All right. When an individual holds a rating  
52 which authorizes him to fly, what is the mechanics of going about getting an airplane and engaging in a flight? How generally is that handled? A. When a man comes into an organization, he is assigned to either, regardless of the position, based on his flying status, valid orders, he is required to participate in flights and those are normally scheduled by the base commander for these people who are required to fly. He establishes a schedule as to when these people should fly and how much time they should fly per quarter because we allot 125 hours of flying per year for these pilots in each state and we support them to that extent.

Q. Now, are any orders, formal orders, issued with respect to such flight? A. Each time the guy is flying, there is an operation order issued by the unit which shows the flight, what it is for, and so forth, there is a definite operational order issued on each flight.

Q. Do such orders refer to a specific individual and specific flights? A. By name, serial number, member of organization, yes.

Q. Well, now, suppose you have an individual who is both an air technician employee, a civilian employee, and an officer member of a National Guard unit, how  
53 would the orders refer to the individual? A. It would refer to Captain John Doe, AO such-and-such, assigned to such-and-such organization.

Q. Would it refer to him in his civilian employment status in any way? A. No, sir.



Q. Why is that? A. When the man steps into a cockpit, regardless of whether he is a civilian or military member of the organization, the only way he gets his pilot rating is by being a military pilot on valid orders. When he steps into that cockpit or when he writes his form, his local clearance or his form 175, if he is leaving the base, which is his clearance authority, he doesn't write Mr. John Doe. It is Captain John Doe, AO, such-and-such and assigned to such-and-such a unit, and that is listed on his clearance. When he gets in there, his forms are listed as Captain So-and-So, assigned to such-and-such a unit. He is not listed as "Mr." And he is flying in his military status as a military rated pilot of that organization.

Q. Did these principles and regulations control with respect to the Maryland Air National Guard in 1958? A. Yes, sir.

54 Q. Did they apply to Captain McCoy in the flight he made on May 20, 1958? A. It applied to Captain McCoy in the flight he made on May 20, 1958; yes, sir.

Mr. Pettibone: I have no further questions for the General.

Off the record.

[Discussion off the record.]

[Whereupon, the taking of the deposition recessed at 12:05 o'clock p.m., and resumed at 1:45 o'clock p.m. of the same day.]

Whereupon—

**Winston P. Wilson**

resumed the stand and, having been previously sworn by the notary public, was examined by counsel and testified further as follows:

#### Cross-Examination

By Mr. Mudd:

Q. General Wilson, I have just a few questions. You stated that the United States is the owner of the aircraft.

which are turned over to the various state Air National Guard units; is that correct? A. They belong to the federal government. The custody of the aircraft is in the state, but it belongs to the federal government. It is federal property.

Q. Is there any distinction in the uniforms worn by an active Air Force pilot and an Air National Guard pilot or Air Reserve pilot? A. No; same one; authorized under the regulation as the Ready Reserve of the Air Force.

Q. Do each one of the states have an Air National Guard unit? A. Each state has at least one.

Q. Do some of those units operate from federal or Air Force fields? A. Yes. We have 94 installations. They are divided up between private fields, military bases. Seventy-one of them are on civilian airports. There are a total of 38 in joint use.

Q. Would you mention some of the military fields at which Air National Guard units are based? A. Hinsley, Lincoln Air Force Base, Ellington Air Force Base, Dow Air Force Base, Maine. Do you want me to go ahead?

Q. Approximately how many are there altogether? A. There are 14, and they are on joint use with active Air Force, to the best of my knowledge right now. There are two private fields.

Q. Is there an Air Force adviser assigned to each one of the units? A. Each unit has an Air Force adviser, that is right.

Q. In the annual 15-day training program which I understand each one of the Air Guard units participate in, conducted at an Air Force or government-owned airfield? A. Not necessarily.

Q. Is it customary for it to be conducted at a military field? A. Not customary. Right now we are using some military and some commercial fields. For example, Alpino, Michigan, is a civilian field, at which we have a permanent training site. Boise, Idaho, is a civilian field where we have

a permanent training site. Gulfport, Mississippi, is a commercial field, where we have a civilian training site.

Q. The Alpino, Michigan, field was the field at which the 104th trained in this past summer? A. That is right.

Q. During its training period it was used exclusively by the Air National Guard? A. I would not say that is true. I have been there many times when civilian airplanes used it, used the field.

Q. This summer there were four jet squadrons training there, were there not? A. That is correct. Still a civilian airport.

Q. Coming to the air technician classification that you mentioned, I believe you indicated that the base commander was required to have a flight rating. A. No,  
57 I did not so indicate. He can or he cannot. We recommend that he do.

Q. Which were the classifications for which it is mandatory that you have a flight status? A. The operations officers and the two flight training supervisors.

Q. You felt it was desirable for the maintenance officer to have a flying status? A. I think it is desirable for the maintenance officer as well as the base detachment commander.

Q. Why is it necessary that it be mandatory that the operations officer have a flight rating? A. If he is going to be an operations officer and be responsible for the operations of the unit, he has to fly with the unit. The operations officers in all Air Force units are required by the UMB to be rated pilots.

Q. Why is it desirable for your maintenance officer to have a flight rating? A. I feel a maintenance officer should be able to check his own airplanes. I mean if I were a squadron commander, I would insist on my maintenance officer being a rated pilot. It gives the pilots, the other pilots, certainly a safe feeling if they know the guy that is doing the maintenance is also going to fly the airplane.

Q. What position as air technician did Captain  
58 McCoy hold on May 20, 1958? A. I don't know the  
exact position. I know he was an air technician and  
the position, as to the exact position, I can't say.

Q. Are air technicians paid from federal funds? A. Air  
technicians are paid from funds allotted to the state for  
the purpose of paying the salaries that are authorized by  
the state for technicians.

Q. Is that part of their salary, whether it be in part or  
their entire salary if it is entirely from federal funds,  
given to them by a federal officer, disbursed to them by a  
federal officer. A. The funds, the USP&FO does not ac-  
tually receive the money. He receives an allotment of  
funds for this purpose, for which he prepares vouchers  
against and which vouchers are forwarded to a finance  
agent for payment in making out the checks.

Q. Is it processed through him in any event? A. It is  
processed through him. He has no funds as such, where  
he can get dollars in his hands.

Q. For each one of your air technician's jobs, is there  
a job classification or requirement structure that is pro-  
mulgated by any agency of the federal government? A. In  
accordance with ANGR 40-01, which is the guide for type  
of employment, we allot to the states the number of man-  
years against that. It is up to the state to determine  
59 whether they want to employ all of them or part of  
them and what they pay.

Q. Before a person can be employed as an air technician  
under any one of the various classifications, he has to  
comply with the job requirements as promulgated by 40-01?  
A. We presume that he does, because that is the job de-  
scription given to the state.

Q. Who passes on whether he meets the requirements  
or not? A. Once each year at the inspection that is a part  
of the Air Force inspection team to check that.

Q. The Air Force annually checks that? -A. That is right.

Q. Had Captain McCoy been annually checked by the

Air Force to make sure that he met the qualifications? A. I have not seen any inspection report from the Air Force that indicated otherwise.

Q. Have you seen the Air Force inspection report that he had met the qualifications? A. There is no mention of it. Unless there was some deficiency, it would not be written up.

Q. So there is no report unless it is negative? A. That is correct.

Q. From that you presume he did meet the qualifications of the Air Force? A. That is right.

Q. And to keep a rating you indicated that certain qualifications, requirements, had to be met, such as flying so many hours, and so on, and it is the same rating that one acquires by these qualifications that you mentioned when you speak of a maintenance chief having a flight rating which you consider to be desirable. A. That is correct.

Q. And his part of the requirement for flying so many hours aimed at maintaining the proper proficiency of the particular individual. A. Maintaining the proficiency of the individual in that type of equipment; yes.

Q. When you use the term unit manning document, is that similar to the T/O or Table of Organization? A. That is correct. That is what they call it now, that is the up-to-date term. It used to be called a TONE.

Q. Before the federal government appropriates or allocates funds for an Air National Guard unit, does the manning document have to be filled or substantially filled? A. Not necessarily.

Q. Does it have to be filled to the extent that it has sufficient manpower for what the Air Force considers to be a minimum to maintain an efficient unit? A. That is correct. It has to meet a minimum strength requirements based on a phase growth over three years for federal recognition. I believe the regulation states they must have at least 25 per cent of their personnel authorized



enlisted by the state for the extension of federal recognition.

Q. And, of course, recruitment to fill out this minimum requirement for federal funds, I suppose, is necessary in some cases inasmuch as you mentioned the various units may conduct their own recruiting activities. A. The recruiting activity has to go along year by year, because you have people who get out of the organization due to change of residence, so it is a physical disability later on to make them require an additional person. There is continual recruiting. We recruit on the average of 13,000 people a year to maintain our strength of 72,000.

Q. Is the wearing apparel that the pilots of an Air National Guard unit wear in flying an aircraft owned by the federal government? A. If you are talking about his flying suit.

Q. Flight suit. A. Flight suit. That is issued by the federal government as an item of issue. His uniform, of course, is not.

Mr. Mudd: That is all I have. Thank you, General.

By Mr. Wolcott:

Q. General, just what is the Air National Guard Bureau?

62 A. The National Guard Bureau, composed of a Chief of the National Guard Bureau and certain staff functions, has an Air Division or an Air Office and an Army Office. It is set up by statute that there will be a Chief, National Guard Bureau. He is charged with the administration of the National Guard, both Army and Air.

Q. Set up in federal statute? A. Yes, sir.

Q. So it is a federal agency. A. It is a special staff agency for both the Army and Air Force, right. The people who make up the Bureau are on active duty, plus the civilian employees under federal civil service employment.

Q. Are they all paid from federal funds? A. National Guard Bureau? Yes, sir.

Q. Where is the office of the National Guard Bureau?

A. It is on the second floor of the Pentagon.

Q. That is where your office is? A. Yes.

Q. That is your full-time office? A. Yes.

Q. And you are paid by federal funds? A. I am paid by federal funds.

Q. And no state funds are contributed to your pay?

A. No, sir.

63 Q. Or any member of your staff? A. No, sir.

Q. Or of the Bureau? A. No, sir.

Q. About how large a staff is that in the Bureau? A. I imagine that we have in the Bureau a total of about, well let's take in my own office, I have 49 military and about 65 civilians.

Q. And the location of your office at the Pentagon is also to help you keep in contact with the Air Force and the regular Army forces? A. Yes, that is correct. It doesn't necessary have to be in the Pentagon.

Q. But they facilitate the contact. A. That is correct.

Q. Is there a constant contact between your agency and the other agencies of the United States Armed Forces? A. Oh, yes, sir. Under the functions of the National Guard Bureau it requires that personnel of the Bureau be in constant contact with similar agencies of the Army and the Air Force in the development of programs, and so forth.

Q. And is one of the purposes to coordinate standards and facility of command? A. Not of command, but in establishing the policies and procedures for the administration of the Guard.

Q. Would you say, in a sense, that your agency is  
64 really an integrating unit, its purpose is to integrate the militia as a part of the armed forces? A. By law I am the channel of communication between the Department of the Air Force and the states pertaining to Air National Guard.

Q. You are really the integrating link? A. I don't know whether you call it integrating or not. I don't know that I disagree with the word.

Mr. Pettibone: I will object to the form of the question. It has already been answered.

Mr. Wolcott: I am trying to clarify it a little more.

By Mr. Wolcott:

Q. As I understand it, the Bureau is the link between the Air National Guard and the other parts of the United States Armed Forces? A. I am the channel of communication between the Department, the National Guard Bureau and the state.

Q. You said before the contribution of the states with respect to the formation of a militia is the appointment of officers and area of training. A. Yes.

Q. Are all other things, all other functions performed by the United States, except those two general functions?

A. The training of the organization, the organization, the location of the units are all done by the states in accordance with the regulations prescribed by the Air Force.

Q. But everything else is done by the federal government; is that right? A. Furnishing materiel, procedures; yes, sir.

Q. Now, you mentioned a budget for the National Guard unit. Is there any part of the cost of the National Guard unit that is contributed to by the state? A. Yes, sir.

Q. What part is that? A. It is not within the federal budget, but there is a cost under a service contract with the states in which they pay 25 per cent of certain costs.

Q. What type of costs? A. Janitorial services, minor repairs to building, painting, utilities, and so forth.

Q. And none of that is reimbursed? A. That portion, as I said, is on a service contract where 75 per cent of the costs are reimbursed to the states. In other words, they pay 25 per cent, the federal government pays 75 per cent.

Q. Except for that type of janitorial service, the state does not contribute any other cost? A. Yes. It may not

be exactly the state, but the state and community furnish the land necessary to put the facilities on. We buy no land or facilities of the National Guard. We either get a long-term lease or a dollar-a-year, a 50-year lease, and build the facilities, but none of the land to put

the facilities on are purchased by the federal government. We go into a long-term lease, normally at a nominal fee of \$1 a year.

Q. In other words, land is made physically available?

A. That is correct.

Q. But the installations and all that are done at the cost of the federal government? A. Except for certain installations that were built prior to World War II, where the state built all of them. I am thinking of my own case in Little Rock. We built our own buildings. That was prior to the enactment of the Reserve forces facility act. Many state-owned facilities that are used by the Army and Air Guard.

Q. You mentioned the governor of the state is the commander of an Air National Guard unit. A. That is correct.

Q. Is he commander of that in the same sense that the President of the United States is commander of the Armed Forces? Would you like it to that, General? A. The state militia or the state military codes normally follow the military codes in the federal service, so the President  
67 is commander and the commanding general of the troops in the federal government and the governor is the commander-in-chief, but not in federal service, of the Guard.

Q. But the operational commander of the Air National Guard unit, as I understand correctly from what you have testified before, is in the hands of officers who are federally recognized? A. That is correct.

Q. And in the event of any conflict of command or authority, the ultimate authority or command is in the federal government, is it not; is that correct? A. No, sir. The command of the units not in active federal service remains with the state.

Q. Well, all right, but is there anything to prevent the governor or the adjutant general of the state, can he prevent the President of the United States or his duly constituted representatives, from declaring an act of service?

A. The only way he can declare an act of service is under the laws of the land, where he declares a national emergency.

Q. That is right. A. And the minute he declares a national emergency, the units of the National Guard that he desires leave all state ties behind and come on active federal service.

Q. There is nothing the state can do about that, is there? A No, sir.

Q. So the ultimate command is in the federal government. A. When there has been an emergency declared.

Q. Do you know who pays the rent at Martin Airport?

A. The rent at Martin Airport right now is on a 50-year lease at \$1 a year.

Q. Paid by the United States Government? A. As far as the 104th was concerned.

Q. That was effective as of 1958, at the time of this accident, wasn't it? A. Yes.

Q. Do you know of any instances of any units in the National Guard that have not been federally recognized?

A. No units of the National Guard that are in existence now have not been federally recognized. They have to be federally recognized if you are going to put federal support into them.

Q. I didn't get the last few words. A. Get federal support, spend federal dollars, if they are supported, they have to be federally recognized.

Q. There is no such thing as separate state militia? A. I disagree with you on that.

69 Mr. Pettibone: I object to the form of the question.

By Mr. Wolcott:

Q. Is there such a thing as a separate state militia? A. It depends on the laws of the state.

Q. Have you heard of any? A. Yes.

Q. Where? A. There is one in Texas.

Q. But everything in the National Guard is federally recognized? A. Right.



Q. Does the location of a unit have to have federal approval or consent? A. By inspection.

Q. And all promotions in the unit are to have federal recognition and consent? A. Yes, if they draw the pay of a higher grade.

Q. All training in the unit is pursuant to federal procedures; is that correct? A. Federal procedures and training directives established by the designated agency of the Air Force and approved by the National Guard Bureau, and promulgated by the National Guard Bureau.

Q. And all equipment in the unit is federally supplied?  
A. Correct.

70 Q. And all use of the equipment is under federal direction; is that right? All federal government equipment must be used under federal regulations and according to federal regulations; for example, aircraft? A. Aircraft are used and flown in accordance with regulations prescribed by the Air Force, by the National Guard Bureau.

Q. What provision for compensation, for medical care, is made for, take in the two categories, military personnel of the Air National Guard first, and then civilian personnel? A. Well, under certain laws, it depends on when the disability actually happened as to whether it was covered. Sickness, if it is less than 30 days, if he is on duty for less than 30 days, is not covered. Certain other things are all covered under existing law for military members the same as the Air Force Reserve or any other reserve of the Air Force.

Q. So that where there is an injury while on the job, is that covered for military members? A. Yes, there is certain coverage for injuries if it is during a period of training ordered by the federal service.

Q. It is covered during a flight which may not be part—  
A. I think it has been held that a flight participating under a federal mission would be covered.

71 Q. What type of law is that? Is that a compensation law? A. Now you are getting into the legal end of it.

Q. I don't want to get outside of your area, General. A. I don't know. I know there are regulations as to who is covered and who is not, and so forth.

Q. Does that generally apply to civilian personnel, too, sir? A. Yes. There are certain regulations. I can't quote you that in detail.

Q. You are not familiar with that detail? A. No, I am not familiar with that detail.

Q. All right. I have a notation here. I don't know if you will be able to answer this, General. Is there a separate agency that handles the compensation claims? A. That is an administrative agency other than the National Guard.

Q. You testified that the responsibility for maintenance of government equipment, such as aircraft is—  
I withdraw that.

As I understand it, you testified that the procedures for maintenance of the aircraft are set out by the United States; is that right? A. Set out in accordance with regulations and standards by the Air Force.

Q. And you also testified that it is desirable for the  
72 chief of maintenance to be rated a pilot. A. And we have so stated in 40-01.

Q. And I think you stated that that was for the purpose of checking equipment. A. That is correct.

Q. Well, now, as to the checking of equipment, just how is that done? Equipment, say, has been repaired, aircraft has been repaired or has been acting up in some manner. It might be a possible malfunction, and it has to be flight checked. Does the man go out and check it? The mechanic? A. No. The mechanic certainly checks it in trying to repair it from a ground run-up.

Q. I am talking about a flight check. A. A flight check is done by qualified officers within the Air National Guard pilot structure or technician structure, or it doesn't have to be technicians who check it. Those people who are qualified in their military status to check aircraft could do it.

Q. So that a flight officer can perform a maintenance check? A. A rated officer who is fully qualified in accordance with the regulations may flight check. I flight check an airplane at Andrews Field every time the maintenance is completed on it, and I am no maintenance officer.

73 Q. Certainly where the rated pilot is the maintenance officer, there is no question of his capacity to flight check the airplane, is there? A. No question.

Q. Does the United States contribute any funds to recruiting of personnel? A. The only thing the United States contributes is that we have end funds appropriated for the Chief, National Guard, and funds for information and service officers who prepare kits as training aids or as aids to recruiting, and those are furnished from the National Guard Bureau to the states, posters, pamphlets, and so forth, that the people in the states use in the process of recruiting.

Q. In practical effect, these amount to all of the funds that are spent on recruiting for the National Guard; is that right, sir? A. Except what the state puts in itself. Sometimes the states add money to that and they advertise, and so forth, from funds appropriated by the states.

Q. You used the term "active establishment" several times. May I ask what is meant by that? A. Active establishment, I am talking about where the U.S. Air Force, where everybody is on active duty, as distinguished from a Reserve, where the personnel assigned are on active duty status.

74 Q. Is a reserve officer automatically federally recognized upon becoming a member of the Air National Guard? A. No, sir.

Q. What does he have to do after that? A. You are talking about a Reserve officer?

Q. Yes, sir. A. He has to submit an application. It is forwarded to the Bureau. We will say that first he submits an application to the state. If the state decides he is wanted, his application is forwarded, with his physical, and

so forth, to the National Guard Bureau in accordance with the regulation. We in the National Guard Bureau review his past actions and even though he is already a Reserve officer, if we feel that he would not do the unit any good, we go back to the State and say, for these reasons we think you should discharge these men from the Air National Guard. To date we have had no question whether they would keep him or not. They are not able to get the complete record, unfortunately, but we are able to get it.

Q. General, you mentioned a procedure for disbursing funds for payment, salaries, and I think you mentioned some federal officer that draws the vouchers. A. That is correct.

Q. Now, the funds that he draws upon are U.S. Treasury funds, are they not? A. They are funds appropriated by the Congress.

75 Q. But the money is there in the United States Treasury and he is drawing vouchers against the United States Treasury; is that correct? A. That is correct.

Q. With reference to the loss of this aircraft in this accident on May 20, 1958, did the State of Maryland in any way contribute to the cost of the airplane that was destroyed in the accident? A. No.

Q. It has not reimbursed the federal government, in other words? A. No.

Q. Was any request made by the federal government? A. No.

Q. Is it contemplated that the federal government make any such request? A. No, sir.

Q. I will ask you, General, the same series of questions with respect to the medical care that was given Captain McCoy. Has the State of Maryland contributed to the cost of the medical care?

Mr. Pettibone: I object to the form of this question. There is nothing in the record to indicate that this witness

has said anything at all about these medical expenses.

76 Mr. Wolcott: I realize that.

Mr. Pettibone: I object to the form of the question.

Mr. Wolcott: I will reframe it.

By Mr. Wolcott:

Q. Has the federal government made any demand upon the State of Maryland for contribution to the cost of medical care or hospitalization of Captain McCoy?

Mr. Pettibone: I object to the form of the question again. There is still no foundation to show that this is a matter within the scope of this individual's responsibilities or duties and whether he has any knowledge or connection with it in any way. In the absence of such a foundation being laid for the question, I object to the form of the question. I might mention in this connection also that this is outside the scope of the cross-examination, because it was not a matter that was brought up in the direct examination.

Mr. Wolcott: Do I understand that you are limiting me, limiting my questions to the scope you covered in your direct examination?

Mr. Pettibone: I rest on my initial objection to the form of the question.

Mr. Wolcott: Because I would like the record to show that I don't intend to be so limited.

Mr. Pettibone: I am basing my objection to the form of the question. We believe we can leave the other  
77 matter for another occasion. You have been outside the scope of it already, but I haven't made any objection yet.

Mr. Wolcott: I am perfectly willing for you to make your objection and note it for the record for all that has come before. I don't want to prejudice you.

Mr. Pettibone: I am making an objection only to the form of this particular question for the reason I stated, no more. That is all.



By Mr. Wolcott:

Q. General, may I put this another way, then: Do you have any knowledge of whether any demand has been made by the federal government or any of its agencies on the State of Maryland to contribute to the cost of medical care or hospitalization of Captain McCoy in this case? A. I have no knowledge.

Q. Was any demand made by the federal government for contribution, as far as you know?

Mr. Pettibone: He just answered that question.

By Mr. Wolcott:

Q. I am asking whether any demand was made. A. I have no knowledge.

Q. If any demand had been made, would you have had knowledge? A. I don't think so.

78 Q. Wouldn't it be channelled through you? A. It could possibly be handed through our office; that is correct.

Q. Where else would it be channelled? A. That is the only way it would come. I have no knowledge of it having been channelled through me.

Q. Is there any other means of channelling it through your office? A. We are the agency that it would go through. So you are asking me to swear that I know something that I do not know about. I do not know of any request for that as far as I personally know. I have 59 people working for me and they have certain responsibilities.

Q. I appreciate that, General, and I am not trying to stretch your recollection beyond reason. I know you can't possibly know about this particular item apart from the manifold things you have to concern yourself with, but, on the other hand, I am not going to examine 49 other people on your staff. A. I have no personal knowledge.

Q. I would like to make a request—

Mr. Pettibone: Far be it from me to tell you what you should do or not do. The witness stated that he does not know about it. That would settle it with respect to him. If you want to serve an interrogatory on the United States inquiring as to that, we will answer the interrogatory.

79 Mr. Wolcott: I would like to make the request—and it may save time all around—that a provision be left in this record to be filled in by your office and you supply the information and put that right in there.

Mr. Pettibone: He cannot agree to that and I cannot permit him to. You can serve the interrogatory on the United States. I can't waive the rules of civil procedure. I don't have a right to. If you serve an interrogatory on the United States, I will supply the information that you are seeking. That is the proper way to do this.

Mr. Wolcott: All right, I will do it that way.

Mr. Pettibone: All right.

By Mr. Galiher:

Mr. Wolcott: That is all I have.

Q. Who is Major General Erickson? A. Major General Erickson was the Chief of the Guard Bureau until 30 May 1958. I believe that is correct.

Q. How would you describe the relationship between the Air National Guard and the United States Air Force?

A. Well, now, in what area?

Q. Operationally. A. Operationally, the only relationship there is that the Air Force under its portion of the supervision of training establishes the training standards and the training directives of which the Air National Guard is trained and inspected on.

80 Q. At the time of the CAB hearing into the accident of May 1958, you were asked this question, General: "General Wilson, as Chief of the Air National Guard, would you describe the relationship of the Air National Guard with the United States Air Force briefly operationally." And you answered that question: "Yes.

The Air National Guard, being a Reserve component of the Air Force, the numbers of units and the numbers of people are determined by the requirements of the active establishment to back up the active establishment of an emergency. At the present time we have some 24 wings within the Air National Guard of which 73 squadrons are equipped with jet fighters. All of these units have a D-Day mission with a major command in the Air Force. Now, the 104th Fighter Interceptor Squadron is a part of the 113th Fighter Interceptor Wing at Andrews Air Force Base, which is its wing headquarters. As such, it has been given a mission of a D-Day mission with the Air Defense Command in the role of fighter interceptor squadron of which it is trained and equipped." A. That is correct.

Q. Does that accurately state it? A. That is accurate.

Q. Does that accurately state the answer to the question?

Mr. Pettibone: I am going to object to the form of the question. I base the objection on the fact that you  
81 read a long passage that contains a large number of items. The question, in my opinion, is so complex and goes into such detail and calls for an answer to so many things, it is not susceptible to answer in that form. If you wish to take the items one by one and ask the witness to answer with respect to each one of them, I will not object to the form. I feel it is objectionable in this form.

Mr. Galiher: General Wilson had no difficulty in answering the question, which is the same question I asked here today, before calling his attention to the question asked at the CAB hearing. To make sure, I will read the question back: "General Wilson, as Chief of the Air National Guard, will you describe the relationship of the Air National Guard with the United States Air Force briefly operationally?"

By Mr. Galiher:

Q. Before I ask you to answer that, was the answer I read to you from your previous testimony the answer you

would give here today? A. I would say, "Absolutely." That is the basis of the normal formation of units within the Air National Guard.

Q. Does the Air National Guard operate under Air Force regulations? A. Not entirely.

Q. What do you mean by "not entirely"? A. As I  
82 explained in my initial testimony, where Air Force regulations can be made applicable in full to the Guard, we do, but realizing that the Guard is an inactive duty organization in certain channels of communication that have been established by law for it, as the channel of communication, and other things, we have to amend certain portions of the regulations, so we put out what we call an Air National Guard regulations which carries the same signature line as an Air Force regulation and is just as applicable on the Air National Guard as an Air Force regulation.

Q. When you were asked that same question at the CAB hearing, at page 375, you replied as follows: "The Air National Guard operates under those regulations, and one of my responsibilities as Chief of the Air Force Division is to promulgate Air Force regulations, Air National Guard regulations that are applicable to a fighter interceptor squadron, sir." A. That is exactly right. I promulgate Air Force regulations and Air National Guard regulations.

Q. Was Captain McCoy subject to the regulations issued by your department? A. Correct.

Q. In answer to, I believe, one of Mr. Wolcott's questions, you explained the meaning of federal recognition. A.  
Right.

83 Q. Do you remember that? A. Yes.

Q. May I read this to you, "In order to qualify for federal pay, an individual must be federally recognized. Federal recognition means acknowledgment by the federal government that a person appointed a commissioned officer in the Army National Guard of a state has been appointed to an authorized grade and position, vacancy, in the Army

National Guard of the United States, and that he meets the prescribed standards." Do you accept that as a proper definition of federal recognition? A. Well, I accept that. If you are talking about Air units, it would be Air National Guard of the United States.

Q. Except for that substitution? A. Yes.

Q. Federal recognition is granted by your Bureau, as is evidenced by a certain form that you use? A. That is correct.

Q. Is that called ANGB Form 3A? A. That is in the Army only.

Q. What is the form you use? A. We issue a special order in the Air National Guard.

Q. And do you have any particular designation of that order? A. No, sir, it is a special order.

84 Q. Was such an order issued to Captain McCoy?

A. I think you are reading, I know you are reading from the manual on the National Guard.

Q. Yes, I am. A. The special orders were issued, the 3A is issued for both Army and Air, when we were part of the Army Air Corps. When we changed over, the special order took the place of the 3A, which may have 50 people on the same list rather than issuing one piece of paper for one officer. They are both one and the same.

Q. And whichever it was, one was issued for Captain McCoy? A. One was issued for Captain McCoy. I don't remember the date Captain McCoy got in the Guard.

Q. What does your Bureau do in keeping check on equipment belonging to the United States, which might be detailed to a particular Air National Guard? A. At the original time the equipment is allotted, it is allotted to the states by so many pieces of equipment under unit equipment lists. That is an automatic shipment from depots to the Guard units based on the type of unit and organization which is being formed. The aircraft are allotted to the units based on the type of mission that it has.



Q. What check do you make on the equipment? A. The inspections are run annually, where this is an  
85 Air Force responsibility to inspect annually, at least once each twelve months, the status of the equipment.

Q. Whom did you maintain from the National Guard Bureau at the Martin Airport in 1958? A. Nobody. The National Guard Bureau has no inspection system.

Q. Did you maintain any Air Force advisors there? A. Yes.

Q. Whom did you have there at the time of the accident? A. I don't know his name.

Q. Without indicating his name, what would have been his duties? A. His duties are as advisor of the unit. His duties are to see that the unit operates the equipment, and so forth, in accordance with the standards prescribed in the training standards of the Air Force.

Q. What would he do if he felt that such standards were not being followed? A. If he felt that such standards were not being followed, it would be his prerogative to talk to the base commander and to the military members of the organization. If he didn't feel that was satisfactory, he could go through his federal channels to the Air Forces and say this equipment is not being maintained.

Q. And what would the Air Force do under those  
86 circumstances? A. They would run a special investigation and find out and if it wasn't, and it was at such a status that it permitted the placing of the unit on probation or the withdrawal of federal recognition, they could so make that statement.

Q. You have reference to an air technician manning document. Am I correct as to that? A. That is correct.

Q. Would you mind telling me again, if you please, what that is? A. That is a manning document that is developed in the National Guard Bureau, based on the type of equipment and the type of records that an organization has to maintain and we furnish personnel to the states, allotment of man-years with specific job titles to the states for the employment of people by the state to maintain the equip-

ment, and so forth. Those are job descriptions set up by grades and by ratings as to how much we will pay.

Q. And the funds for that purpose are United States funds? A. They are federal funds allotted to the states.

Q. Did you have a project at the 104th Squadron called Project 448? A. I am not familiar with it.

86a Q. But a project number is assigned to funds? A. You are talking about 448 funds.

Q. Yes. A. I didn't understand your question.

Q. I am sorry. A. 448 is the allotment of funds which covers service contracts, the pay of technicians and other miscellaneous accounts. It is all allotted to the state in one allotment of 448, which covers many expenditures.

Q. And they are allotted by your Bureau? A. They are allotted by our Bureau, that is correct.

Q. Are you acquainted with Colonel Kilkowski? A. I know the gentleman.

Q. He was commander of the 104th Fighter Interceptor Squadron in May of 1958? A. That is my understanding, yes.

Q. Do you recall what his title was at that time? Do you recall that it was a lieutenant colonel? A. I am not sure.

Q. Do you recall if he was referred to as the base detachment commander? A. I believe he was referred to as the base detachment commander.

Q. Is that a description found in the Air National Guard Manual 40-01? A. That is correct.

87 Q. Was his salary paid by the United States Government from Bolling Air Force Base, if you know? A. I don't know.

Q. Was Bolling Air Force Base a United States Air Force Base in May of 1958? A. Yes.

Q. Still is, of course. As commander of the Maryland Air National Guard, was that a rank in the Air National Guard of the United States?

Mr. Pettibone: I am going to object to the form of the

question. We haven't had any testimony of the commander of the Air National Guard up to now.

By Mr. Galiher:

Q. Will you please answer it, if you can? Otherwise I will try to clarify it. A. The commander of the Air National Guard of Maryland is the Governor.

Q. When Colonel Kilkowski gave his deposition he said in answer to several questions (and I am taking these out of context and it is difficult to follow sometimes, I appreciate that, but he said this), he was being asked concerning compensation received by him, this question was asked: "That was as a lieutenant colonel of the Maryland Air National Guard?" He said, "It was as a commander of the Maryland Air National Guard."

88. "Question. Did you have or hold any commission or status under the Air Force?"

"Answer. I held this rank and it is in the Maryland Air National Guard, and it is a rank in the Air National Guard of the United States, and, as such, is thoroughly recognized by the federal government."

Now, my question, therefore, was directed to whether such rank as he had is a rank in the Air National Guard of the United States and, as such, is recognized by the federal government, as he testified. Do you agree with that? A. I agree with the fact that it is a rank called for under the manning document that a commanding officer for the 104th would hold. I do not agree that he is the commander of the Maryland Air National Guard, because that is only left to the governor of the state.

Q. Whatever his rank was, as you understood it, was that a rank in the Air National Guard of the United States which was recognized by the federal government? A. I am not going to be able to answer that question for the simple reason that in the state of Maryland the governor did issue to some of the people a state rank of colonel when their federal rank was below that. I am not sure as to the status, as to his status.

Q. If he said in further testimony that that was a commission in the Air National Guard, which was issued by the United States Air Force— A. I would agree that, if that was right, then that was what his rank was. If it was issued by the government as a reserve of the Air Force as a lieutenant colonel, then that would be his rank.

Q. And was that likewise true of the commission that Captain McCoy held? A. Yes.

Q. Now, holding a commission in the Air Force Reserve, was Captain McCoy required to keep up his flight training?

Mr. Pettibone: I object to the form of the question. It is contrary to the testimony that we have heard throughout this proceeding, and particularly from this witness. There has been no testimony that he held a commission in the Air Force Reserve. I therefore object to the form of the question and I direct the witness not to answer.

By Mr. Galiher:

Q. Was he required by the National Guard Bureau to fly a certain number of hours each year? A. Yes.

Q. As a matter of fact, he was paid extra for doing that, was he not? A. He received hazard-of-flight pay.

Q. Was any disciplinary action of any sort taken by your Bureau as against Captain McCoy as a result of this accident?

Mr. Pettibone: One moment now before you answer that question.

You may answer the question, if you are able to.

Mr. Mudd: Let me note an objection for the record. Of course, I have no right to tell the witness not to answer.

Mr. Pettibone: You wish I would.

Mr. Galiher: I don't know why there was the hesitation that went on before the answer and the head-shaking that went on, for example from Major Blackman in the back of the room. I would like to know why that went on, Mr. Pettibone.

Mr. Pettibone: I will be glad to state the reason why I

requested a momentary delay. In order to protect the rights of employees of the government which I represent in this proceeding, and that, of course, includes members of the military establishment, in either a civilian or military capacity. We do not normally allow questions to be asked concerning the action officially taken by the United States of a disciplinary nature directed exclusively against them as individuals, if it may in some way tend to embarrass or disgrace or discredit, in any way, the individual in question. And it is for that reason, in general, agents and employees of the government, such as this witness, is now testifying, are not normally permitted to answer those questions; after consultation, however, with my advisers from the Department of the Air Force, I was told the answer to that question, if the witness is able to give the answer, would not, in this instance, we think, in any way embarrass or discredit or reflect upon the reputation in any way of the individual who was the subject to your question. Therefore the United States has no objection and I did not direct the witness not to reply. I said he could answer. That is what caused the delay.

Mr. Galiher: It is a perfectly proper question in view of the position as to agency which the United States Government has taken in this case.

Mr. Pettibone: Well, the witness has answered it.

By Mr. Galiher:

Q. Do you happen to know if he was relieved of flying status?

Mr. Mudd: Objection.

By Mr. Galiher:

Q. Would you please answer the question? A. I have no knowledge of it.

Q. Would his records show as to that?

Mr. Pettibone: I am going to object to the form of the question. That ought to be the subject of an interrogatory to the United States. This witness is not a party to the



action and you are not taking his deposition. We are not taking the deposition on that basis. If you want  
 92 to know what the record of the United States contains or doesn't contain, I suggest you might submit an interrogatory to the United States, and then the government will undertake to give you an answer to that. I don't have the authority to waive the rules. This is the normal way these matters are handled under the federal rules of civil procedures, and I don't have the authority, as the government's attorney, to waive those rules in any way.

Mr. Wolcott: By way of reminder, the government has already produced for me records to show that following this accident, Captain McCoy no longer had flying status, if my reading of the record is correct.

Mr. Pettibone: I don't have any recollection one way or the other now. This case has been going on for so long and so many records have been turned over and so many depositions have been taken, I am not physically able to remember every detail. So it could be.

By Mr. Galiher:

Q. That seems like going around Bailey's barn to accomplish something which could be accomplished very readily here. Are you familiar with his record? A. After the accident?

Q. His record up to and including the time of the accident. A. The only thing I am familiar with is he  
 93 was a technician, he was a member of the Air National Guard up there in Maryland. He was a technician and that he was in this accident. I am not familiar with any board or anything else that has come into the Bureau from this standpoint.

Q. What sort of a technician was he? A. He was employed in the maintenance field.

Q. And a technician under whose employ? A. Under the State of Maryland.

Q. Was he not employed pursuant to Title 32, Section 709, under the National Guard, under the law applying to the National Guard, this having to do with caretakers and caretakers and clerks? A. That is correct.

Q. Was the Air Force adviser you recall by name Colonel Van Ausdall? A. He was an adviser. I am not certain he was at the time of the accident.

Q. In any event, you had an Air Force adviser there whose name is not familiar to you today? A. That is correct.

Q. And he was at the 104th Squadron Base to provide instruction and training, was he not? A. He was there to act as an adviser in the training of the Guard unit.

Q. Under detail from the United States Army Air Force? A. Under the United States Air Force, not the Army Air Force.

Q. Pardon me. United States Air Force. A. United States Air Force.

Q. And the requirements that he was there for was to make sure that the unit lived up to the requirements published by the major Air Force command, were they not? A. Training directives were published by the major Air Force command directed by the Air Force, forwarded to the Guard Bureau and promulgated to the states.

Q. And that would have meant the adviser would have been in charge of the training program at that field while he was there? A. No, sir. He is not, has no command prerogative and is not charged with the supervision of training. He is there to assist the unit in meeting its training standards, but the major command is charged with responsibility of supervision of training and inspection.

Q. I believe you explained what would happen if they did not follow his instructions. A. That is right. He has no command authority to direct.

Q. There were certain criteria established by the Air

Force that the 104th Squadron would have to follow, was there not? A. That is correct, in accordance with their training, training standards, and training programs.

95 Q. And it was required, was it not, at the time of the accident that a record of the status of utilization of all aircraft at the 104th Squadron base be furnished the National Guard Bureau or the Air Force, was that not a requirement? A. There is a 110 report that comes into the active Air Force and eventually gets to the Guard Bureau that shows the utilization of the aircraft.

Q. That was prepared, as far as you know, at the maintenance office? A. Normally, that is prepared by the maintenance office of the unit.

Q. Was not a copy sent to the National Guard Bureau as well as the Air Materiel Command? A. It gets to the National Guard Bureau, that is correct, and also to the major command that has supervision of training and inspection.

Q. What was the Materiel Air Command? A. Materiel Air Command?

Q. Yes. A. There is only one and that is AMC. They have suboffices.

96 Q. Was that part of the Air Force? A. Yes, that is part of the Air Force.

Q. And were members of the Air National Guard required to call at your office to discuss maintenance problems with the Maintenance Division? A. Many times they come in and discuss problems, shortages of equipment, and so forth, with my people in the maintenance division.

Q. It is a fact, is it not, that any regulations of your Guard Bureau or of the Air Force will supercede any conflicting regulation of the Air National Guard of the state? A. Of the state?

Q. Yes, sir. A. Normally, the regulations of the Air Force, which include Air National Guard regulations are effective on the unit. The units may expand on the regu-

lations as long as they comply with it and make it further restricting in their normal squadron regulations.

Q. You mentioned the flying evaluation board in response to one of the questions by either Mr. Wolcott or Mr. Mudd. I don't recall. Pardon me. I think it was Mr. Pettibone. Where is that flying evaluation board located? A. Flying evaluation board?

Q. Yes. A. Normally, it is organized by the state  
97 and the unit, the board itself, the people who are on it. The reports that they submit go through channel and finally come to the National Guard Bureau.

Q. Can you overrule the recommendation of any particular evaluation board, flying evaluation board? A. The final reviewing authority is the National Guard Bureau for the Chief of Staff of the Air Force.

Q. What is the personnel of the board that has the final review? A. They are active duty officers in the National Guard Bureau.

Q. Do you recall the names of those gentlemen in 1958? A. No, sir, I do not.

Mr. Galiher: I don't think I have any more questions.

Mr. Wolcott: I have a few more questions. Do you have any?

By Mr. Wolcott:

Q. General, as a technician, did Captain McCoy's duties include flying? A. It could, yes, sir.

Q. Wasn't that part of his job description under which he was employed? A. If he were a rated officer, it authorized him to make that, but when he flew, he was fly-  
98 ing in his military status.

Q. That isn't what I asked you, General. I asked you whether, as a technician, his duties included flying. A. We say he should be a rated officer, and I would presume, yes, that that would be one of his jobs if he were a rated officer.

Q. General, was this question put to you in the CAB hearing and did you give this answer:

"Question. General, as a technician, did Captain McCoy's duties include flying?"

"Answer. As a part of his, in the job description under which he is employed, yes."

A. That is right. That is still true.

Q. General, what was the alert status of the 104th Squadron in May of 1958? A. By alert, I would like for an explanation on that.

Q. Well, again, General, I refer you to a question that was put to you at this CAB hearing, and there was no qualification of the question asked by you. I will read the question:

"Question. General, what is the alert status of the 104th Squadron?"

And I will read the answer you gave, General:

"Answer. The 104th Squadron has a mobilization assignment to the Air Defense Command. Further, it  
99 has an assignment, I believe, to the 95th Air Division at Andrews Air Force Base. It is required to be able to get at least 50 per cent of its aircraft fully armed in the air in the first hour in case of an emergency or requirement by the Air Force."

Did you give that answer?

A. That is a true statement, yes.

Q. And I gather you don't want to change that answer.

A. No, I don't want to change that answer. Could I go off the record just a minute and explain what I am talking about?

Q. I would prefer to stay on the record. A. No, that is a true statement at that time, that period of time.

Mr. Pettibone: Excuse me just a moment. That wouldn't be classified information in any way, would it? I am not objecting, of course. I have no idea whether it is or isn't.

The Witness: That is not classified information. That is open and on the wide board, but with his word "alert" there are several connotations that now apply that didn't apply at that time.

Mr. Pettibone: All right.



By Mr. Wolcott:

Q. General, was there an air space reserved for  
100 the use of the 104th Squadron? A. As I remember,  
they did use Andrews area for instrument flying  
and for other purposes.

Q. Well, do you have any knowledge or recollection of  
what air space was reserved for the use of this squadron?

Mr. Pettibone: One moment. I am not objecting. I would  
just like to point out to the General that, if any of these  
questions call for the disclosure of classified information  
which could not be released to the public, you should so  
state, General, and that I think will be accepted as an  
answer under the circumstances, but I have no idea whether  
this question calls for that.

The Witness: This is not a classified question. The only  
thing I can say is I am not familiar with the metes and  
bounds of the area; normally, each squadron has an area  
within a 200-mile radius, just where they can practice cer-  
tain maneuvers, certain procedures. I am sure Maryland  
had one also, but I am not familiar with the metes and  
bounds.

By Mr. Wolcott:

Q. The exact location. A. The exact location.

Q. I will ask you this, General. I don't know whether  
you may possibly be able to answer it. Was there an area  
of air space reserved for this squadron but which  
101 was not used by it? A. I am sorry I cannot answer  
that question.

Q. You can't answer that? A. No, sir.

Q. Do you know who would be able to answer that? A.  
I imagine that Colonel Kilkowski can because that is estab-  
lished with the officials within the state. He would coordi-  
nate that with both the military and the civil officials on  
the establishment of areas.

Q. What agency has charge of reserving the air space  
for the use of Air National Squadrons? Would that be

done through your Bureau? A. No, that would not be. That would be done through the FAA or then at that time the CAA.

Q. I see. And would that be done through a request originating from the squadron? A. From the unit?

Q. From the unit. A. Yes. It is just possible that that is a request from the unit.

Q. What contribution to pay for the costs of the 104th Squadron did the State of Maryland make? A. I can't give you the exact dollars, but they paid 25 per cent of what the service contract amounts to.

Q. You are talking about the janitorial services? A. Janitorial, minor maintenance, and the utilities.

102 Q. That is on the ground buildings. A. Correct.

Q. But as to the squadron itself, maintenance, operation, and so on, the State of Maryland did not make any contributions? A. Did not make any contributions other than the land on which we placed the facilities?

Q. With respect to the civilian employees of the Air National Guard unit, can the United States Government effect their discharge? A. No, sir.

Q. But in practical effect, the United States Government can work the discharge by stopping the salary; isn't that right? A. If they find that the man is not meeting the requirements, they can.

Q. Right. Were the civilian employees of the 104th Squadron paid entirely by federal funds? A. The civilian employees, the air technicians of the 104th were paid from funds allotted to the state. Whether the state augmented their pay or not, I am not familiar.

Q. But as far as you know, all of the pay was from the federal government; is that correct? A. I say I don't know whether they augmented it or not.

103 Q. Would that be unusual? A. I would say not unusual, because it does happen in the states—Idaho for one, Connecticut for another, New York is another one—where a pay is augmented, funds that are allotted are augmented by state funds.

Q. That depends upon the local rate of pay? A. That depends upon the local establishment of the pay rates by the states.

Mr. Buckmaster: But you establish the pay grades?

The Witness: I establish the pay grades and the maximum the state can pay per job description. If the states want to augment that, that is their responsibility.

Mr. Buckmaster: That applied to McCoy?

The Witness: Yes.

By Mr. Wolcott:

Q. When I referred to it depending on local conditions, I meant local scales. A. The basis of the pay for a similar type job within the area.

Q. Yes, that is right. A. That is right.

Q. Are there procedures for setting up and generally the conduct of the adjutant general offices in the various states fairly uniform? A. I would say, no, they are not uniform. It varies depending on the military code of the state.

104 Q. I see. A. For example, in South Carolina, the adjutant general is an elected officer. He is a constitutional officer of the state. In some states they are appointed for six years. Some change every time the governor changes.

Q. Did your Bureau conduct an investigation into this accident? A. No, sir, the Air Force conducted an investigation.

Q. And did your Bureau participate in that investigation? A. Not as a member of the committee.

Q. In any way? A. No.

Q. Did you have an observer present at the investigation? A. I had not.

Q. Did the Bureau have? A. No.

Q. The Bureau did receive a report? A. The Bureau receives a report after it comes through Air Force channels.

Q. Did the Bureau receive a transcript of the proceedings? A. Of the board report?

Q. Of the proceedings before the board. Did the Bureau receive a transcript? A. We receive, as a federal agency, the form 14 and the documents attached thereto.

Q. I am sorry. I am not familiar with Form 14. A. That is an accident report.

Q. And the documents attached to it, would that be transcript and other documents before the board? A. Yes, sir.

Q. And that form 14 and attachment is presently in the Bureau files? A. I presume that it is.

Q. That is at the Pentagon? A. That is the normal procedure.

Mr. Wolcott: That is all.

Mr. Mudd: I have nothing further.

#### Redirect Examination

By Mr. Pettibone:

Q. I have just a couple of questions, General. Now, Captain McCoy in 1958, up to May 20, 1958, was a rated pilot, was he not? He had a pilot's rating. A. That is correct.

Q. In order to maintain that rating, he was required to fly a certain amount of time, a certain number of hours over a specified period of time. A. That is correct.

Q. In other words, there was a federal requirement, would you say, that to maintain the rating, he had to meet that requirement to fly a certain number of hours over a specified period of time. A. That is correct.

Q. Was there any federal requirement that he make any specific flight or flights within that period of time? A. That depended upon his squadron commander as to what he required of the individual.

Q. The squadron commander was Colonel Kilkowski, was he not? A. Yes.

Q. With respect to making flights, he was only required to make those that Colonel Kilkowski required?

Mr. Mudd: Objection.

Mr. Pettibone: On what basis?

Mr. Mudd: You are leading the witness.

Mr. Pettibone: He stated as required by the squadron commander. I asked him, "Was the squadron commander Colonel Kilkowski?" He said, "Yes."

By Mr. Pettibone:

Q. Was he required to make any specific flights by anyone other than Colonel Kilkowski, so far as you may know?

A. I imagine if the adjutant general required him to make a flight, that he would make it.

Mr. Mudd: Off the record.

[Discussion off the record.]

107 By Mr. Pettibone:

Q. Was he required, if you know, to make any flights by any federal officer or agency as distinguished from the adjutant general or any agent or employees of the State of Maryland?

Mr. Mudd: This is directed to this particular man's own personal knowledge?

Mr. Pettibone: I said, if he knows.

The Witness: To my knowledge, my own personal knowledge, no.

By Mr. Pettibone:

Q. When he made a flight, was he required to fly in a specific aircraft, a particularly designated airplane? A. He could fly in those aircraft that he was qualified in, which were several.

Mr. Wolcott: May I ask a question while you are waiting.

Mr. Pettibone: I am not finished. Wait just a minute, please.

Mr. Wolcott: Surely.

Mr. Pettibone: I don't have any more questions.



## Recross-examination

By Mr. Buckmaster:

Q. Does Captain McCoy still have flying status?

Mr. Mudd: Objection.

108 Mr. Buckmaster: You may answer it.

The Witness: I don't know.

Mr. Mudd: He said he didn't know.

By Mr. Buckmaster:

Q. You don't know whether he does or not? A. I have not seen the records on that case.

Q. You mean before you came here to testify you didn't go over his records and discuss it with counsel for the government? A. No, sir.

By Mr. Wolcott:

Q. General, does your Bureau have any function in the rating or promotion of officers? A. Any function in the rating?

Q. Rating or promotion? A. Or promotion? Are you talking about military or civilian?

Q. Flight officers, military. A. Military?

Q. Yes. A. We play a function in the promotion once he is recommended by the state. He appears before a board and we review his record to see whether he is qualified or not in the job he has. If he is, we recommend to the Air Force for an appointment as a Reserve of the Air Force grade.

109 Q. In considering his promotion, do you go over his record? A. Yes.

Q. Does the fact that an applicant may have a history of airplane accidents affect your final recommendation? A. It depends on what the boards of those accidents revealed.

Q. If there was a finding of fault by the board, what effect does that have upon your recommendation for a promotion?

Mr. Mudd: Sir, excuse me for just a second. If, you say, there was a finding of fault.

Mr. Wolcott: If there had been a finding of fault by the board, what effect does it have upon his recommendation?

Mr. Mudd: Inasmuch as this is an abstract question, I will make no objection.

The Witness: Normally, when we find fault with an individual, I would say it would certainly have some weighted effect on the job, if flying was his primary duty.

By Mr. Wolcott:

Q. When you say "weighted effect," you mean an adverse effect? A. It would have an adverse effect.

Mr. Wolcott: Thank you.

By Mr. Galiher:

Q. What would your Bureau do with respect to  
110 either Captain McCoy or anyone that you found  
had not been maintaining his flying? A. If he doesn't  
maintain his flying under the regulations, he is put before  
a flying evaluation board. We removed some 117 from fly-  
ing status last year.

Q. You mean by that of your National Guard Bureau?  
A. That is right.

Mr. Galiher: Thank you.

Mr. Mudd: Could I ask one? Maybe it will be the last.

Mr. Pettibone: Certainly.

By Mr. Mudd:

Q. In answer to Mr. Pettibone's question you said that  
Captain McCoy, other conditions being met, could fly any  
of the aircraft in which he was qualified. A. Right.

Q. As aircraft maintenance chief, however, his position  
was to maintain all aircraft assigned to the unit. A. That  
is right.

By Mr. Buckmaster:

Q. As maintenance chief, it was also desirable that he  
maintain his proficiency and his knowledge of airplanes;

isn't that correct? A. That is correct; of all those assigned.

Q. And also he is a better technician if he could  
111 fly those, I suppose. A. Correct, sir.

#### Further Redirect Examination

By Mr. Pettibone:

Q. General, who initiates flying evaluation boards in cases of rated pilots who fail to meet the minimums? A. Unit commander, by regulation.

Q. Unit detachment commander? A. No, the military commander. You are not checking him as a civilian. You are checking him as a military member of the organization.

Q. I see. I have no more.

#### Further Recross-examination

By Mr. Wolcott:

Q. I have one more question. General, in the years prior to May 1958 were reports received by your Bureau or the military of collisions or near collisions with civilian aircraft? A. I imagine they would be in the records of flying safety, yes.

Q. Weren't there a large number of reports received of collisions?

Mr. Pettibone: I am going to object to the form of the question. When you say a large number of reports, that isn't susceptible of a specific meaning. If you want  
112 to designate any given number from 1 to a million, I don't object. Then he can answer.

Mr. Wolcott: I withdraw it.

By Mr. Wolcott:

Q. Were there reports received from time to time of collisions between military and civilian aircraft? A. I have not seen the reports. I understand that there were reports of which Board action was taken prior to his becoming a member of the National Guard, and I don't know what was the findings on the report.

Mr. Mudd: I ask that that answer be stricken inasmuch as I do not think it was responsive to what Mr. Wolcott had in mind.

Mr. Wolcott: A general statement.

Mr. Mudd: I do not believe he was concerned with any particular individual.

By Mr. Wolcott:

Q. I wasn't referring to Captain McCoy, General Wilson. I was referring to the general problem of collisions and near misses between civilian and military aircraft. A. Those are reported to flying safety and those reports are not in our Bureau.

Q. Was there a special program inaugurated or participated in by the Air Force with respect to the problems raised by collisions between military and civilian aircraft prior to May 1, 1958? A. I don't think there was anything special about May 1958. This has been a problem we have been dealing with ever since I have been in the National Guard, especially since World War II.

Q. And hadn't that problem become more acute in the period a few years prior to May 1958? A. It has been becoming apparent ever since you got an increase in military and civilian people trying to use the same airways. This is the biggest problem we have had for years in the flying game. It isn't safe any more at all. I have had more near misses in the last ten years when I have been able to see the plane and the guy that was flying hadn't seen hide nor hair. Just three days ago I was on an assigned altitude coming out of the West Coast at 15,000 feet, and if I hadn't seen an airplane that wasn't supposed to be there because they didn't report it at all, we would have had a good collision. So the thing of collisions in aircrafts is becoming more acute now than it ever has been in the history and until such time as we can get positive control of all flying, we are going to still be faced with a problem of near misses.

By Mr. Wolcott:

Q. And it was considered acute, wasn't it, prior  
114 to this accident? A. I have been working on a  
program of this kind ever since 1950, ever since I  
have been in the Guard Bureau.

Mr. Wolcott: That is all.

By Mr. Buckmaster:

Q. Could you give us the name of the Chairman of the  
Air Force Board who conducted the investigation into the  
McCoy accident? A. He is from Bolling Field. No, he is  
not either. I don't know his name.

Q. Do you know the names of any of the members of the  
board? A. No, sir, I do not. I do not have them at my  
finger tips right now. I can't think of any.

Mr. Wolcott: That is all I have.

Mr. Pettibone: Thank you very much, General. I be-  
lieve that is all there is, then.

[Whereupon, at 3:50 o'clock p.m., the taking of the depo-  
sition was concluded.]

8

Deposition of Captain Julius R. McCoy.  
Plaintiffs' Exhibit 12

(Excerpts)

Examination by Mr. Galiher:

Q. What is your full name and present address? A.  
My name is Julius R. McCoy. My address is 4 K Alder  
Drive, Baltimore 20.

Q. What is your age, Captain? A. I am thirty-six years  
old.

Q. What is your occupation at the present time? A. I  
am employed by the Air National Guard, Maryland, as  
air technician. My job title is Aircraft Maintenance Chief.

Q. What are the duties of your job? A. To supervise  
aircraft maintenance, and basically the supervision of air-  
craft maintenance.



Q. Do you have any other positions or jobs? A. I am also attached to the Air National Guard in a military status as squadron, as aircraft squadron maintenance officer.

Q. When you say the Air National Guard, is that the United States Air National Guard? A. It is defined as Maryland Air National Guard.

Q. Now, what are the duties in connection with  
9 the position you have just mentioned that you have?

A. Again, this is supervision of aircraft maintenance.

Q. And can you give us a little more in detail just what that entails? A. Well, we have twenty-five F86H-type aircraft and two T33-type aircraft, and one C47-type aircraft. And my job is to see that the aircraft are maintained in accordance with proper regulations and the supervision of the people that do maintain them.

Q. Are these aircraft all maintained in one place? A. That is correct.

Q. Where is that? A. The Martin Airport, Baltimore.

Q. And was this the same situation which existed in May of 1958? A. That is correct.

Q. Now, let us go back to the first position that you spoke of that you have. Will you outline the duties that you have with the Maryland National Guard? A. I did not understand your question.

10 Q. Well, if I did not misunderstand you, I understood that you had several positions: one you indicated with the Maryland National Guard in aircraft maintenance, and then you indicated that you had another category which you also filled with respect to these planes that you have just mentioned. Am I wrong about that? A. The two jobs are identical in job descriptions.

Q. What about in the duties? A. The duties are the same.

Q. What is the reason for having two different titles, two different job names? A. As air technician, the manning structure is not the same as the military structure, so the job titles are different.

Q. Do you receive two different salaries? A. That is correct.

Q. For the two different jobs? A. That is correct.

Q. Can you explain what those consist of? A. I don't understand you.

Q. Tell us what the salaries are and what each is supposed to be for. A. You mean in amount or what?

Q. In amount and in time spent. A. The air technician job is considered a full-time job, or a day-to-day job, and the amount is approximately \$7500 a year, and the military job is paid at a military rate for approximately forty-eight days a year, and I think that amounts to about \$1200 a year, including two weeks of active duty for summer training.

Q. Now, then, do you take your orders from two different groups in the two jobs or do you take your orders from just one group? A. When I am an air technician, I take my orders from the Base Detachment Commander.

Q. Are you referring now to Martin Field? A. That is correct.

Q. And who is that commander? A. That is Lieutenant-Colonel Victor Kilkowski.

Q. Colonel Kilkowski is in the room at the present time, is he not? A. That is correct.

12 And in the military status, I take my orders from Major John Scott, who is the Squadron Commander of the 104th Tactical Fighter Squadron.

Q. Will you give us the full title of the squadron and what its affiliation is, please? A. The full title is 104th Tactical Fighter Squadron, Maryland Air National Guard.

Q. What is Colonel Kilkowski's affiliation? A. He is the Base Detachment Commander of the Martin facility and has the over-all responsibility for maintenance of the facility and aircraft, and he is air technician.

Q. His permanent assignment at the present time then is at the Martin Airfield? A. As an air technician, yes.

Q. What about Major Scott, what is his affiliation, and where is he located? A. His air technician status is as flight training supervisor, if I am correct. I believe that is his title.

Q. Flight training supervisor for whom? A. For the 104th Fighter Squadron, Air Technician Operation,  
13 and he is Squadron Commander in a military status.

Q. Is this likewise at Martin Field? A. This is at Martin Field.

Q. What is the relationship between Colonel Kilkowski and Major Scott? A. Colonel Kilkowski in the military status is Deputy Chief of Staff for Air for the State of Maryland, and Major Scott becomes a Squadron Commander by the military.

Q. Does that mean that Colonel Kilkowski is Major Scott's superior? A. That is correct.

Q. When did you commence your present assignment? A. This I believe was in May 1958. I may be incorrect.

Q. What had been your flying background prior to May of 1958? A. I entered Flight School in January of 1944.

Q. What Flight School? A. Primary Air Force, Primary Flight Force, at that time the Army Air Corps at Tucson, Arizona, and graduated from the Air Squadron  
14 Flight School in August of 1944, from Luke Field, Phoenix, Arizona, and remained with the Air Force, or the Air Corps, until late 1945, at which time I was flying primarily B17s, and some other incidental aircraft, T6 and T3.

Q. Up to that time you had none other than a military rating? A. That is correct.

Q. And you were terminated in 1945? A. That is correct.

Q. And what did you do in the intervening years up until 1958? A. I had no association with flying other than a very few hours in light planes. At that time I had a commercial authorization.

Q. Well, did you retain any reserve status on termination? A. Yes, I was in the Officers Reserve Corps, and

then joined the West Virginia National Guard. This is the Infantry National Guard. And in 1952, January 1952, I joined the Maryland Air National Guard, this same unit, the 104th Fighter Squadron. And in April 1952

15 I resumed flying with my military rating.

Q. Now, up to that time did you have any commercial or private rating? A. I had a commercial rating, yes.

Q. When did you get that rating? A. I got that, I think, in early 1946.

Q. And what exactly was your rating? A. A commercial pilot.

Q. What was the last word? A. A commercial pilot.

Q. And did you maintain that up until 1950? A. I held the ticket, yes. I may not have complied with the requirement, flying requirement to be current at any particular time.

Q. Well, where did you do your flying in the intervening period? A. I did just a little bit of flying in light planes from Princeton, West Virginia, and Beckley, West Virginia. Very limited.

Q. Did you pass the physicals required? A. Yes.

16 Q. Where did you take those physicals? A. In Princeton, West Virginia.

Q. But your flying you have indicated was very limited, though? A. That is correct.

Q. What type planes did you fly in the period up to '52? A. Well, I did not fly up to '52. I think I only flew in the year 1946. And they were light planes of various descriptions, small-horsepower aircraft.

Q. From 1946 until when did you fail to fly? In other words, when did you first fly in '46? A. Well, I resumed flying in a military status in April 1952.

Q. And that was after you joined the Maryland Air National Guard? A. That is correct.

Q. Did you have your reserve commission still at that time? A. That is correct.

Q. In other words, that continued right straight  
17 through, I take it. A. That is correct.

Q. Now, exactly what was your rating and rank  
when you joined the Maryland Air National Guard in 1952?  
A. I was a second lieutenant pilot.

Q. And where were you stationed at that time? A. In  
Harbor Field in Baltimore.

Q. How long were you at Harbor Field? A. The head-  
quarters of the 104th was at Harbor Field until I believe  
1957, at which time they moved to the Martin Airport.

Q. In other words, you were with, as far as the squad-  
ron was concerned, no other squadron from 1952 up to and  
including the present time? A. With the exception of some  
Air Force schools that I attended.

Q. Now, when you started in 1952, you did not have the  
dual job rating that you now have? A. That is correct, it  
was a military status only.

Q. Did you wear the same type of uniform that  
18 you have on at the present time? A. That is right.

Q. That has no Maryland Air National Guard  
identification on it whatsoever? A. No, sir.

Q. You have U.S. on both lapels, and that is the uni-  
form that officers with the United States Air Force wear?  
A. As far as I know, there is no difference.

Q. And that, as you have indicated, is the type of uni-  
form you have worn since 1952?

Will you give that answer?

A. As far as I know, there is no difference between the  
uniforms.

Mr. Davidson: The reporter may guess when you nod  
and put down a yes, so it is better to say it out loud.

The Witness: Yes, I will.

Mr. Galiher: Would you repeat that last question, Mr.  
McDonald, please, so we can be certain that we have the  
answer.

(Question read by the reporter.)



Q. (By Mr. Galiher) And is your answer to that question yes? A. The answer to that question is that this is the type of uniform that I have worn since 1952.

Q. Well, is there any difference between the type of uniform you have worn since 1952 and the type of uniform worn by persons who are in the United States Army Air Force? A. Not to my knowledge.

Q. May I also ask if the shoulder bars are similar to those used by the United States Army Air Force? A. They are.

Q. And the buttons also that you are using? A. Yes.

Q. The insignia on the buttons on your pockets and on the coat? A. Yes, sir.

Q. And the wing? A. Yes.

Q. In the left lapel, close to the left lapel, is that the same? A. That is the same.

Q. Now, then, when you started with the Maryland Air National Guard, as you have indicated, in 1952, did you have any written orders or billets?

A. Can you clarify that just a little bit, please?

Q. Well, did you have any documents which explained exactly what your connection with the assignment was? A. Yes.

Q. Where are those documents at the present time, all documents that may have been given to you in the intervening years? A. I possibly have personal copies, and I assume that there are file copies. I could not tell you the physical location.

Mr. Galiher: May I ask you, Mr. Mudd, if you would approve my request to either furnish us with copies of them, or provide authorizations which would enable us to secure them from the proper source?

Mr. Mudd: As far as I personally am concerned, Mr. Galiher, I would have no objection. What the military requirements might be, I don't know.

Mr. Galiher: I appreciate that, and consequently I have couched my request as I have.

21 Mr. Mudd: All right.

Mr. Wolcott: Would that also apply to my group of plaintiffs, Mr. Mudd?

Mr. Mudd: I see no reason why not.

Mr. Wolcott: Thank you.

Q. (By Mr. Galiher): Do you recall what your first assignment provided in your orders? A. I was assigned as a fighter pilot, and my primary duty was a fighter pilot after a certain period.

Q. And do you recall who signed those orders? A. I do not.

Q. Where did you take your training? A. At Harbor Field.

Q. And under whose auspices? A. The squadron at that time was commanded by and is now Lieutenant-Colonel Edwin Warfield, III.

Q. With what organization is he at the present time? A. He is Chief of Staff for Air for the State of Maryland.

Q. How long was your training period? A. I truthfully don't know.

22 This type of training was on an entry level training program to upgrade to a full classified level in the type aircraft we were flying. I don't know when I achieved the full aircraft level.

Q. What type aircraft were you flying? A. That was initially the T6-type aircraft, and then the F51-type aircraft, after a short training in the T6.

Q. What type of aircraft are those to a layman? A. The T6 is a trainer aircraft, reciprocating air-conventional type.

Q. How many seats? A. Two seats. And the F51 is a single engine type aircraft.

Q. Also two seats? A. One seat.

Q. One seat. Now, then, after you completed the training, what was your first assignment and where? A. I was assigned as a fighter pilot to the 104th Fighter Squadron.

May I hold the record just a moment?

Q. Indeed you may.

23

(Discussion off the record.)

Q. (By Mr. Galiher): Were you constantly at Harbor Field on this first assignment? A. No.

Q. Where were you besides Harbor Field? A. I had a civilian job here in Baltimore, and attended drill periods or military training periods at Harbor Field, and made flights from Harbor Field on various other days.

Q. Where were you working at that time? A. I worked for the Ajax Brass Specialties Company in Baltimore.

Q. In what capacity? A. I was in production control.

Q. What exactly does that mean? A. I was responsible for scheduling machinery for certain machine operations on metal.

Q. All right. Now, how much of your time were you spending with the National Guard while you had that job?

A. Well, I spent numerous Saturdays in the capacity of a pilot.

24

Q. You were working five days a week then with Ajax? A. That is correct.

Q. Now, what pay did you receive at that time? A. From what?

Q. From the National Guard. And how was it determined and what was the basis for it? A. The basis was a pay, military pay, of one day, with certain restrictions. I believe the allowances are something like that, that are not under full schedule control.

Q. Were those checks payable on the Treasury of the United States that you received in that period? A. As far as I know, they were.

Q. As a matter of fact, have you at any time since 1952 received any check for military service that was not payable on the Treasury of the United States? A. As far as I know, I have not.

Q. When did your status change from part-time to full? A. In June of 1956.

Q. In other words, for approximately four years you were on this part-time status that you have explained, which meant that you worked five days a week at a civilian job in Baltimore— A. That is correct.

Q. —and on week-ends, on special assignments, and perhaps in the summer you were on military duty. A. That is correct.

Q. Now, during the summer in those intervening years did you go on active duty for periods? A. We had active duty for training periods of two weeks' duration each summer.

Q. And where did you train during the four summers that intervened between '52 and '56? A. In '52, we were at Reading, Pennsylvania.

Q. May I interrupt you and ask you what was the field? A. Spence Field.

Q. And whose field was that? A. I am not aware of the owner of the field.

Q. Well, I mean by that was that a private field or was that a United States Air Force Field? A. I could not answer that. There were military and civilian operations out of there. But the owner of the field I don't know.

Q. And what was your assignment? A. As fighter pilot.

Q. With whom? A. With the Maryland Air National Guard.

Q. Were there any other persons from the Maryland Air National Guard at that time? A. Other than myself?

Q. Yes. A. The 104th Fighter Squadron, as part of the —I believe the 112th Wing was stationed there.

Q. Did you have any instruction there? A. Yes.

Q. Who was giving you the instruction? A. The squadron was commanded by now Lieutenant-Colonel Warfield, and we received instructions from various people in his command.

Q. Well, Colonel Warfield is with the Maryland Air National Guard? A. That is correct.

27 Q. Were there any personnel from the United States Army Air Force there instructing and training you? A. Yes. Let me qualify and say that we had an Air Force advisor, Colonel Van Ausdall. I am not sure of the last name.

Q. Was this training program provided by the United States Army Air Force? A. As far as I know, the training program was to satisfy certain requirements published by the Major Air Force Command.

Q. Now, by Major Air Force Command, you mean the United States Army Air Force Command? A. The United States Army Air Force, or one of its subdivisions.

Q. And would that mean that the Major Air Force Command would have been in charge of the training program at that field while you were there? A. I don't believe we could have deviated from their directions.

Q. I don't understand you. I know you are trying to answer my question. Would you clarify it, please?

28 A. I will do my best.

There are certain criteria established by the Air Force that we have to satisfy in training. Now, there is no particular problem involved of not satisfying those requirements. I don't know that we could have just cast them aside and run our own training program.

Q. Were there other persons from other states taking the same training program there while you were there? A. There were. There were two squadrons from Pittsburgh, I believe.

Q. What about 1953? A. In 1953, we were at the McGuire Air Force Base.

Q. What state is that? A. New Jersey.

Q. And under some training program, one sponsored by the United States Army Air Force? A. The United States Air Force.

Q. And were there other squadrons from other states? A. There were.

Q. What about 1954? A. 1954, Otis Air Force Base in Massachusetts.



29 Q. Was that likewise sponsored by the U. S. Air Force? A. Yes.

Q. And were there likewise—— A. May I say something?

Q. Surely. A. The word "sponsored" I am not sure——

Q. Well, suppose you tell me what it was. I gathered from the way you explained it that these training programs were put on by the U. S. Air Force and that you and other——

Mr. Pettibone: I object to the form of the question. You are giving the witness the answer.

Mr. Galiher: Would you permit me to finish my question, and then if you object to it, you can do so.

Q. (By Mr. Galiher): I gathered from your previous answers that each year, for several years, you and persons from other National Guards and from other states would attend a training program put on at these various fields by the U. S. Air Force. Did I misunderstand you? A. As far as I know, the training program that we attended at the fields was established by the United States  
30 Air Force.

Q. Yes, sir. A. Now, whether or not they sponsored it, I am not clear on the definition of the word.

Q. Were there any instructors from the U. S. Air Force in each instance at those various fields? A. These people, their job descriptions I believe called them advisors.

Q. But apart from the job description, did you know them as officers with the U. S. Air Force? A. That is correct.

Q. And now, I think you brought us up to the Otis Field in Massachusetts in 1954.

Where did you go for training in 1955? A. Travis Field, in Savannah, Georgia.

Q. And was the program there similar to the training program you had pursued the previous summers at other bases? A. It was.

Q. Was that likewise put on by the U. S. Air Force?

A. The training requirements were established by the United States Air Force.

31 Q. And there were likewise officers there taking that training program who were in the U. S. Air Force? A. There were. There were advisors at those locations also.

Q. Connected with the U. S. Air Force? A. That is right.

Q. And likewise there were persons from other states there participating in the program like you were? A. There were.

Q. What about 1956? A. Again Savannah, Travis Field.

Q. And was the program as it had been the year before? A. It was.

Q. Now, then, was it in 1956 that you discontinued your civilian job and took a full-time job with the squadron?

A. In 1955, I discontinued my civilian job, in September, and attended approximately a nine-months course at Chanute Air Force Base in Illinois, to train, to satisfy the requirements of my job as an air technician.

Q. What prompted the discontinuance of your civilian job and your pursuit of a full-time career at this point?

32 Mr. Mudd: Objection.

You go ahead and answer it. A. At that time I was teaching school in Baltimore, or in Baltimore County, and I felt that the job opportunities were better and that I would be more satisfied personally with that type of job.

Q. What steps did you take to get that type of job and how was it finally consummated? A. Well, there was a job opening, and after some discussion with the squadron commander—

Q. May I interrupt you to ask you what the job opening was and who was the squadron commander that you spoke to? A. The job opening was aircraft maintenance officer—and let me qualify that—I am not really sure of the job title for it—it may have been base maintenance officer and technician. And the squadron commander at that time—was it Scott?

Q. Well, you tell it to the best of your recollection. A. It was either Major Scott—

33 Q. —or Lieutenant-Colonel Warfield— A. Yes.

Q. —the people that you have previously identified in the record? A. Yes.

Q. What were the duties of this position that you have identified for us? A. They were the duties of the Base Maintenance Supervisor, to supervise aircraft maintenance and vehicle maintenance and other related equipment.

Q. Where was the Base? A. At that time our aircraft operation, or aircraft maintenance operation, was at Friendship Airport in Baltimore.

Q. When you speak of "our" who are you referring to? A. The 104th Fighter Squadron.

Q. Now, then, did you have to go through any preliminary training or comply with any preliminary requirements before you were accepted? A. Accepted as air technician?

Q. Accepted for this job that you have identified and explained. A. I attended the Air Force School 34 at Chanute Air Force Base in Illinois.

Q. That is the Air Program of nine months that you pursued? A. That is correct.

Q. Can you give us the full name and description of the base at Chanute Field, Illinois? A. It is the Chanute Air Force Base, Illinois, and it is primarily, I believe, a United States Air Force Maintenance School.

Q. Did you have written orders which sent you to that base? A. I did.

Q. Do you still have those, as far as you know? A. Possibly.

Q. Would you please check, and if you have them, please turn them over to your counsel so that he can examine them.

The Witness: Will you do that?

Mr. Galiher: The record will show that. Let your 35 counsel have them.

The Witness: All right.

Q. (By Mr. Galiher): Did anyone else from the State of Maryland come to the field at the time you went there, as far as you know? A. For the same job?

Q. Or any other jobs. A. There was one airman there, one other employee.

Q. What training program did you follow? What training program did this other man pursue? A. I was pursuing the Aircraft Maintenance Officer's Course, and I believe that the course numbers were 43, 44.

Q. What about this other man? A. I am not positive about that myself. He is an electrician who was there for training in that field.

Q. Was he an officer in the National Guard, the Maryland National Guard? A. No.

Q. Either then or later? A. No.

Q. Now, this program was put on by the U. S. Air Force? A. That is correct.

Mr. Pettibone: I think I will object to the form of that question.

Q. (By Mr. Galiher): All right, would you answer it, please, and you have the objection in. A. As far as I know, it is a United States Air Force Base, and they took all their training there.

Q. There was no one there in a civilian capacity conducting the training, was there? A. There was.

Q. Who was that? A. There are civilian employees there. I believe Civil Service employees.

Q. Employees of the U. S. Air Force? A. The United States Government.

Q. Well, were there any other persons there who gave you training instruction other than employees of the United States Government? A. I don't think so.

Q. By the way, how were you paid while you were at Chanute Field? A. I was paid through the Air Force Finance Office at Chanute Field.

Q. You received compensation from no other source during that period? A. No.

Q. And what did your training consist of there? A. There was a course there that covered practically every area of an aircraft maintenance officer's duties.

Q. Did you do any flying there? A. I did.

Q. What flying did you do there? A. I flew the T28-type aircraft.

Q. To a layman, what kind of plane is that? A. That is a conventional type single-engine trainer, two seats, a T33-type aircraft.

Q. How many seats? You explained that before as a single-engine jet. One or two seats? A. Yes, one seat.

Q. Anything else that you know of that was there? A. There was the B25 there.

Q. Now, what did this program of training consist of other than flying?

Mr. Pettibone: I object to the form of that question, too.

Q. (By Mr. Galihier) Now, please answer it. A. As I stated before, I was schooled in as many areas as possible in these nine months in the duties, and all the phases of duties of an aircraft maintenance officer.

Q. All right, now, tell us what those duties consisted of? And may I withdraw that and first say before leaving Maryland to go to that field, had you been given any outline of what these duties would consist of, or did you learn all that after getting to Chanute Field? A. I had a general knowledge of the duties.

Q. As given to you by whom? A. Not as given to me by any specific individual.

Q. What was your general knowledge when you got to Chanute Field? A. Well, sir, by being associated for a number of years with military type flying and the people connected with it, I had acquired a certain knowledge. Specifically as to what it is, I could not answer that.

Q. Well, generally, could you answer it, please? A. The supervision of maintenance of aircraft and equipment and



the necessary coordination with other functions, such as supply and operations.

Q. When you got to Chanute Field, did you receive a confirmation of your previous knowledge, or did you find out there were many more duties and details than you had previously suspected? A. I learned that there were more, many more duties and details.

Q. What additional duties did you learn that you would have? A. I would not say that I learned there were additional duties as much as they were elaborations on the general duties and specifics in the general duties, the management problems in the supply and operations systems, and so forth, were elaborated there.

Q. Did you learn that all the property that you would maintain would be property belonging to the United States Government?

40 Mr. Pettibone: I object to the form of the question.

Q. (By Mr. Galiher) Please answer it. A. I don't recall any class that specifically pointed this out. The procedures that are taught with reference to the maintenance records themselves indicate that the property is Air Force property.

Q. Did you have to pass tests in the training course? A. I did, yes.

Q. In the assigned course? A. Yes.

Q. And did you have to stay there until you finished certain courses and passed certain examinations? A. Yes.

Q. Or was the course terminated at a previously set date, that is, at a certain time? A. I believe the course was scheduled in at a specific date. However, certain tests had to be completed within that date. There was some allowance for other variables.

Q. And you were at Chanute Field from start to finish? A. With the exception, I believe, of my trip to Baltimore.

41 Q. What was that for? A. I came back to Baltimore to get my family and took them back with me.

Q. I see.

Now, did you successfully graduate in the various courses required of you? A. I did.

Q. And when did you come back to Baltimore? A. I came back in June 1956.

Q. Did you have to receive any formal assignment at Chanute Field before coming back to Baltimore? A. With the Air National Guard?

Q. Yes, sir. A. I was informed when I departed that upon successful completion of the school I would be employed with the Air National Guard as an air technician.

Q. Who informed you as to that, Captain? A. Major Scott.

Q. Well, was he at Chanute Field when he informed you as to that? A. This was in Baltimore prior to my  
42 departure for Chanute Field.

Q. Oh, I see. Well, then, you received no formal orders at Chanute Field upon completing the program? A. You mean assigning me to the Air National Guard?

Q. Yes. A. The orders, I believe, were that upon completion the pilot at that time upon orders will be returned to the home station.

Q. Did you get a diploma or certificate upon completing that course? A. I did.

Q. And do you have that also? A. Yes, I do.

Q. Would you likewise turn that over to Mr. Mudd, if you please? A. I will.

Q. Then upon completing the course you came back to Baltimore? A. That is correct.

Q. And did you immediately start full time in  
43 Baltimore? A. I did.

Q. And exactly what was your title at that time and what were your duties? A. Again I am not exactly sure of the exact title as air technician. I believe it was Base Maintenance Supervisor.

Q. Where? At what place? A. At Friendship Airport, with headquarters at Harbor Field.

Q. Who were your superiors? A. I believe that Colonel Warfield was Squadron Commander of the 104th Fighter Squadron until the end of that year.

Q. And this was 1955? A. 1956.

Q. 1956. And exactly what was your title? A. Again, as I say, I don't recall the exact title. I believe it was Base Maintenance Supervisor.

Q. Do you mean by written orders? Were you given written orders? A. I assume I was. There are 44 orders employing me, or there were at that time orders. I assume I was given a copy. I don't recall.

Q. Were there other persons in the particular job you had or were you the sole person with the assignment that you have described? A. I was the sole person in the 104th Fighter Squadron.

Q. As of that time, what property was under your control in that capacity? A. I had control over three T33-type aircraft. I am not quite clear on that, whether it was two or three—this is some years ago—and I believe about eighteen F86E-type aircraft, and which was, of course, I think, about twenty-three or twenty-eight, the F86E-type aircraft conventional.

Q. Anything else? A. And a C47-type aircraft.

Q. Anything else? A. I believe that is all.

Q. Where were these planes kept at that time? A. The F86 aircraft were at Friendship Airport and the C47 was at Harbor Field.

45 Q. In whose hangar? A. The hangar, I believe, was owned by the City of Baltimore, with certain spaces leased through another agent to the Air National Guard.

Q. Who was the other agent? A. I think it was Pan American Airways.

Q. Did you ever see a copy of the lease? A. No, sir.

Q. Do you know if this was a formal written lease or oral lease? A. I have no knowledge of it as to the terms.

Q. This is Friendship? A. Yes.

Q. Was that likewise true of Harbor Field? A. I am not aware of the arrangements there.

Q. Who owned these planes? A. The United States Air Force owned the equipment.

Q. And do you know the circumstances under which they were in possession of the Air National Guard? A. As far as I know, the aircraft are assigned to the National Guard Bureau and distributed by the Bureau to the individual units, and the units are charged with the responsibility for the maintenance of them.

Q. What is the full name of that Bureau? A. The National Guard Bureau.

Q. The National Guard of what? Is that the full title? A. As far as I know, it is the full title.

Mr. Wolcott: Would you get the headquarters address, please?

Mr. Galiher: Yes.

The Witness: It is in the Pentagon in Washington.

Q. (By Mr. Galiher) Now, were you required to send certain reports on the equipment and to turn certain reports on equipment over to any persons or agencies? A. Yes, sir.

Q. To whom, may I ask? A. There are reports that are submitted to various agencies.

Q. Please list them. A. I don't know if I can recall them all. There is the 1-10 report, Air Force, and it is either on DD Form 1-10, or on Air Force Form 1-10.

Q. And what is the DD Air Force 1-10 or Air Force 1-10? A. It is a record of the status of utilization of the aircraft for a calendar month.

Q. Who prepares that form, and who made this, first? A. They are prepared in the maintenance officer's office, and a copy is sent to the National Guard Bureau and a copy to the Air Matériel Command.

Q. May I ask you, where is the maintenance officer's office?

Mr. Mudd: When, Mr. Galiher?

The Witness: Well—

Mr. Galiher: I thought we were talking about 1956. And if there is any difference, of course, between now and then, I would be very happy to determine it. But this question I am asking, if you wish to draw any distinction between a practice at that time, a practice in 1958 and practice in 1959, please do so.

Mr. Mudd: Well, I am not concerned about the practice, but you are asking the witness to give you the  
48 physical location of the office.

Mr. Galiher: Yes. And this question, of course, had to do with 1956.

Mr. Mudd: All right.

The Witness: At this time the office was located in a hangar at Friendship Airport.

Q. (By Mr. Galiher) Now, you have told us that one copy went to the National Guard Headquarters. A. Yes, the National Guard Air Bureau.

Q. Where was the National Air Guard Bureau? A. The National Guard Bureau?

Q. The National Guard Bureau. A. Yes.

Q. Where was that located? A. At the Pentagon.

Q. And I think you started to mention a third place, is that right? A. The Air Materiel gets a copy.

Q. Yes. Where is that located? A. I believe this copy goes to the McClellan Air Force Base.

49 Q. And McClellan Field is located where? And what is the full title of the Materiel Air Command? A. McClellan Air Force Base is located in Sacramento, California, and the title is Air Materiel Command.

Q. Of what organization? A. It is a Division, a Subdivision of the United States Air Force.

Q. Yes, sir.

Now, have you given us the full title of the office at the Pentagon that you mentioned? If not, will you please do so? A. It goes to the Chief of the National Guard Bureau, but it is directed to the Air Division of the Maintenance Section.



Q. Of the U. S. Air Force? A. Of the National Guard Bureau.

Q. Well, is the National Guard Bureau a separate unit at the Pentagon or is it a part of the U. S. Air Force? A. I am not completely familiar with their relations.

As I understand it, the Bureau is a division of it, but I am not sure what the relation is.

50 Q. Have you ever visited that Bureau yourself?

A. Yes, I have.

Q. And under what circumstances and when? A. I don't recall exactly when, but I have been there on several occasions to discuss maintenance problems with the Maintenance Division of the Maryland National Guard Bureau.

Q. Before the accident that we are going to inquire into here today? A. Yes, that is correct.

Q. And do you recall what the precise problems were about that took you there? A. I do not.

Q. Do you have a record of those anywhere or could there be a record at your headquarters? A. Not necessarily, no.

Q. You cannot give us any idea as to what the maintenance problems were that took you to Washington, or, rather, I should say to the Pentagon Building in Virginia?

A. Not precisely, no.

Q. Well, could you give us even the faintest idea?

51 A. None, none whatsoever.

Q. But you believe you may have been there several times? A. Yes.

Q. What about the command in Sacramento, did you ever go there? A. Never have, no, sir.

Q. I believe you told us you sent these reports on maintenance to these three places you mentioned today. A. Yes. There are, I believe, two other copies that I am not quite sure at the present time where they go. One copy is retained locally.

Q. You mean by locally out at Martin Field? A. Right.

Q. Or at Friendship, as it was then? A. Friendship in that case, and eventually it may have gotten to our headquarters location at Harbor Field.

Q. Would there have been a copy sent to any other agency? A. One copy, I believe, goes to the Tinker Air Force Base at Oklahoma City.

52 Q. What is the base there? A. It is an Air Materiel Command Base.

Q. Of the U. S. Air Force? A. Of the United States Air Force. This copy goes to that function at the base. There may be other activities on the base.

Q. Do those reports deal with conditions of different planes of the U. S. Air Force at Friendship?

Mr. Pettibone: I object to the form of the question.

Q. (By Mr. Galihier) Now, please answer. A. No, they belong to the utilization and the operation status of the aircraft, but not to particular conditions at any given time.

Q. You mean what they have been used for during the intervening month? A. They indicate utilization in the form of flying hours as opposed to hours possessed for the month.

Q. By hours possessed, you mean taking a 24-hour day, having the plane on the day the plane was utilized? A.

That is correct.

53 Q. Is that right? A. Yes.

Q. Now, who utilized those planes at that time, and if there is any difference now, of course I would be interested in hearing that. A. Basically, it is the pilots assigned, or attached to the 104th Fighter Squadron in this case.

Q. Did any U. S. Air Force pilots ever use them? A. Yes, sir.

Q. Under what circumstances would they use them? A. The air advisor that is attached has a responsibility to maintain certain efficiency standards.

Q. Who was the air advisor for the U. S. Air Force who was attached to the Friendship Field, or who was attached to Friendship and thereafter at the other field? A. It was the 104th Fighter Squadron. Attached to the 104th Fighter Squadron.

Q. What necessarily are his duties or were his duties at Friendship Field, and who was it at that time in 1956?

A. He was Lieutenant Colonel Robert Dow. And I could not tell you exactly what his duties are. He is attached as an advisor or learner with the United States Air Force.

Q. Do you know his present address? A. Colonel Dow, I believe presently is in Germany with the United States Air Force.

Q. I see. Did he occupy the same office that the National Guard offices occupied at Friendship Field? A. His office was located at Harbor Field.

Q. Pardon me? A. In the National Guard facility there.

Q. This was at a time when you were at Friendship Field, is that right? A. Yes, that is correct.

Q. You say he was there in an advisory capacity and as a liaison officer, is that correct, liaison with the Air Corps? Mr. Davidson: What is the answer?

A. Yes.

Q. (By Mr. Galiher). What exactly did his duties consist of as you understood them? A. As I understand them, the air advisor is assigned to help with the standardizations between other units, other like units, and between the now Continental Air Command, which is our parent trained Air Force.

Q. Now, when you say standardization of other units, I assume that you mean that he was to make sure that all units operated in the same way, I take it. Is that what you mean by standardization? A. Well, that all units operate and to satisfy the criteria established by the Air Force.

Q. And the other units which you were using together with your own unit were what units? A. We had a senior air advisor that was attached to the 113th Fighter Wing, and within the Wing.

Q. May I ask you where that Wing was located? A. That is located at Andrews Air Force Base.

Q. And was that also a National Guard Unit? A. That is correct.

And within the Wing there were, at that time, three squadrons, and I think each squadron had an advisor.

Q. And Andrews Air Force Base is the United States Air Force Base a short distance outside of Washington, which you have reference to? A. That is correct.

56 Q. Now, did you take your orders at any time from Colonel Dow? A. As a superior officer in a military status, I was obligated to take orders from Colonel Dow.

Q. And from time to time did he give certain necessary orders which you complied with? A. Possibly.

Q. Well, what was the relationship, if any, between—was it Major Scott who was your superior officer as far as the National Guard was concerned, or was it Colonel—you gave me the names of Warfield and Dow—Colonel Warfield? A. At that time and until the end of 1956, at that time Colonel Warfield was the Squadron Commander of the 104th Fighter Squadron of the Maryland Air National Guard.

Q. He was Colonel Dow's superior officer at the base? A. He was the senior officer, yes.

Q. And would Colonel Warfield take orders from him under certain circumstances and conditions just like  
57 you would? A. I assume he would. He had a rank obligation.

Q. Did you have any flying operations at that time? This is 1956. A. I was a rated pilot, and as a pilot I had efficiency standards to maintain, minimum flying qualifications to maintain, yes.

Q. And did you comply with and satisfy those requirements? A. I did.

Q. Were you required to file reports as to your flying time? A. Yes, sir.

Q. Did you receive any additional pay for flying? A. Yes.

Q. At that time? A. As a rated pilot, there is an additional pay.

Q. What was the additional pay and who provided it?

A. The Treasury of the United States provided the pay,

the checks were made on the Treasury of the United States, and the additional pay was a prorated portion of the flying pay.

58 Q. Did you at that time still maintain your Reserve commission? A. I had an Air National Guard commission.

Q. From the United States Air Force? A. It is Federally recognized by the United States Air Force.

Q. Now, was this additional pay for flying paid as a result of that commission or was it paid as a result of the job classification that you had at the field? A. It was paid as a result of the commission and rating as a pilot.

Q. Well, the end rating as a pilot, you mean that was a part of your Air Force Reserve commission, or was it a part of your job classification at the base?

Mr. Pettibone: I object to the form of that question.

A. I received flying pay as a result of my being commissioned and federally recognized as on a flying status and having accomplished certain flight time from the United States Government, and not as an air technician.

59 Q. Was there any requirement as to certain flying time, and if so, who laid down the particular requirement? A. This ~~is~~ as a result of my commission or as an air technician?

Q. Well, if it encompasses both, I would like to hear it. A. As a result of my commission, in order to maintain the rating as a pilot, I was required to satisfy certain criteria established by the Air Force in the form of flying.

Q. By the United States Air Force? A. Yes.

Q. And you did all your flying in the U. S. Air Force planes at the base? A. Well, this question cannot be answered that simply. When you say all my flying at that base, I flew the Air Course assigned to this squadron at Friendship Airport, yes.

Q. All of which was titled in the name of the United States Air Force? A. It was my understanding that the aircraft are the property of the United States Air Force, assigned to the Maryland National Guard.



Q. And to whom did you turn in your statements showing flying time? ~~A.~~ My statements, personal statements, were filed in the operations section of the 104th Fighter Squadron, and the disposition of the forms from that point, I am not aware of that.

Q. Now, you told us that you would get extra pay from the Federal Government for flying, am I correct? A. I got extra pay as opposed to a non-rated or non-flying person with the same rank, yes.

Q. Well, these reports would ultimately have to get back to the U. S. Air Force to show how much flying time there was in order to have the amount of money due to the assignment you would get?

Mr. Pettibone: I object to the form of the question.

A. I cannot answer that question. I assume they would have. I don't know the method or disposition of the forms.

Q. (By Mr. Galiher) You have no idea then where you sent the reports? A. I did not send the reports.

Q. What did you do? A. My reports, as I say, were filed in the operations section with the 104th Fighter Squadron.

Q. At the field? A. At the field, yes.

Q. At that time Friendship Field? A. Harbor Field.

Q. And what you are telling us is that you don't know whether they went there or not? A. That is right.

Q. Would they have gone to Major Scott or Colonel Warfield? A. I cannot answer your question.

Q. Now, then, did your status as you have explained it existed in 1956 in any way change, and if so, when?

Mr. Mudd: Up to what date? You mean to the present time?

Mr. Galiher: If there was a change, I am now asking when it first changed.

A. You mean—

Excuse me, Mr. Mudd.

Mr. Mudd: Do you want it from then to the present time, Mr. Galiher?

62 Mr. Galiher: I am only asking now when the first change in status occurred. And I will try to take it from there.

Mr. Mudd: Go ahead.

A. You are referring to my military status as air advisor officer?

Q. (By Mr. Galiher) Any status. You are explaining what your status was in '56 when you came back to Friendship from Chanute Field, what your duties were and what you did, and now I am asking when did any change occur in your status, in your duties, and when was that. A. I had a duties change in the air technician job, I believe in May of 1958.

Q. And that was the subject of written orders? A. There were orders, yes, indicating that.

Mr. Wolcott: What is the date on that? Get the date of it, if you will.

Q. (By Mr. Galiher) When was that? A. I believe that was in early '58.

Q. Was this before the accident occurred? A. Yes.

63 Q. Who did those orders come from? A. The decision for the orders I believe was made by the Base Detachment Commander.

Q. Who was at that time— A. Lieutenant Colonel Kilowski.

Q. What was the nature of the change in status? A. We were authorized and acquired another full-time technician who took over the duties of Base Maintenance Supervisor.

Q. Were those duties formerly occupied by you? A. That is correct.

Q. All right. A. And I took over the duties of Aircraft Maintenance Chief.

Q. And what was the difference in the dates, and where? A. Basically, Major Mitchell, and he occupies other positions, but he was Maintenance Supervisor.

Q. What is his name, please, and his present address? A. Jesse D. Mitchell, Major.

Q. He is still a major? A. He is with the 104th Fighter Squadron.

64 Q. Thank you. A. He took over the over-all supervision of the base, aircraft, vehicles, and related equipment, and under the job description I am confined to the aircraft maintenance area only.

Q. What duties then did you give up? A. The vehicle maintenance, the building maintenance, the crash rescue equipment maintenance, and so forth.

Q. What additional duties did you take on? A. I don't believe I acquired any additional duties. Q. What duties did you continue to have? A. The responsibility for aircraft maintenance, maintenance of the aircraft.

Q. What exactly did that consist of? A. Supervision and control of the maintenance procedures and the protection of the property.

Q. The what of the property? The protection? A. Yes.

Q. The protection of it. I see. I am trying to get the word that you used there. A. Let me retract the  
65 word, if I may, and say I was responsible to see that the property was not abused by maintenance personnel.

Q. Now, again are you referring to the planes of the United States Air Force? A. The aircraft.

Q. Of the United States Air Force which was at the base? A. That is right.

Q. What station were you assigned to? A. Let me correct that. Those planes are assigned to the Maryland National Guard, and as I understand it they are the property of the United States Air Force.

Q. What base were you at at that time? A. Martin Airport.

Q. When had you left Friendship and gone to Martin? A. In the summer of 1957.

Q. And did you take with you the same planes that you had then at Friendship Field? A. We did.

Q. And is it a fact that in the intervening years between

1956 and 1958 some planes were taken back by the  
66 Air Force and some additional planes were sent to  
replace the planes that had been taken back? A. We  
received additional aircraft in that period and we had con-  
verted—

You said 1958?

Q. I said from the time you went back in '56 up to and  
including this period you are now talking about. A. In  
mid-1957?

Q. Yes. A. I don't recall their having transferred any  
aircraft back to the Air Base.

Q. Between '57 and '58? A. Well, between '57 and '58  
we had changed aircraft types, at which time we received  
from the Air Force, from the Air Force Reserve facilities,  
different type aircraft.

Q. By the way, who made the necessary repairs on this  
aircraft from the time that you went back to the base and  
up to and including 1958? A. I am not aware of the budget  
system. We requisitioned and received aircraft spares  
through this Air Force installation.

67 Q. You mean U. S. Air Force installation? A.  
U. S. Air Force installations.

Q. In other words, whenever you needed a new part to  
repair a wornout or damaged part on one of those planes,  
it was furnished by the U. S. Air Force? A. Yes.

Q. Upon a written request? A. We received the equip-  
ment from a United States Air Force facility generally.

Q. Would you have to go through the liaison officer  
assigned to your particular field— A. No, sir.

Q. —to get those parts? A. No, sir.

Q. What system did you have for securing them? A.  
There are established supply channels where the mainte-  
nance people can requisition aircraft spares or other  
spares that—I am not totally familiar with all the budget  
problems or the proper writing of the requisition.

Q. Did you get some of them, for example, from  
68 Andrews Field? A. Andrews would not normally be  
a source.

Q. What would be the normal sources? A. There are certain United States Air Force Bases that are established as bases for supplies, or depots that would normally stock those parts or repair parts for distribution.

Q. Pardon me? A. For distribution.

Q. And what would be the normal source for this area? A. This would vary with the type of equipment.

Q. Well, can you describe the several sources for this area, then? A. The general airplane type of spares for this type aircraft repairs would probably come from Sacramento, from McClellan Air Force Base.

Q. All right. A. And the engine spares would probably come from the Tinker Air Force Base.

Q. Where is Tinker? A. In Oklahoma City.

69 Q. I see. A. And the instruments for the airplane would probably come from Mobile, Alabama, from Brookley Air Force Base.

Q. These are all U. S. Air Force Bases? A. They are United States Air Force Bases.

Q. And from time to time between 1956 and 1958, parts were secured from one or all of these bases? A. Yes.

Q. Now, then, did you have any serious damage to any of the planes during this period 1956 up to and prior to the time of the accident in 1958, when it was necessary to actually send the plane to one of these places or to some other U. S. Air Force Base for repairs? A. I don't recall having to send an airplane to an Air Force Base. If we had an aircraft damaged, we had to get disposition of the aircraft from the United States Air Force.

Q. Tell us about that, please. A. We had one aircraft that was damaged, and it was considered more economical to repair that by AMC—Air Materiel Command—and we were instructed to remove certain parts from the  
70 aircraft for recovery and transporting the carcass to Middleton Air Force Base, or the Olmstead Air Force Base at Middleton Air Base.

Q. That is the United States Air Force Base? A. Exactly.



Q. Did the Materiel Command actually send someone to—would it be Friendship or Martin—to examine this plane? A. No, they did not.

Q. How was that handled? A. The examination was made by myself, with the assistance of some specialists, and the report of damage was submitted through the proper channels to the AMC, and from this report they determined the aircraft was beyond economic repair.

Mr. Mudd: By AMC, you mean Air Materiel Command?

The Witness: Air Materiel Command.

Q. (By Mr. Galihier) Now, then, I started to ask you about your new assignment. Was that when you were elevated to captain? A. No, sir.

71 Q. When were you elevated to captain? A. In July, July 1st of 1956.

Q. And that was upon your return from Chanute Field? A. That was after my return from Chanute Field.

Q. Now, in 1956 and '57, after leaving Chanute Field, did you have any training program which you pursued thereafter at any U. S. Air Force Bases? A. No, sir.

Q. You did not take any training program in 1957? A. In the United States Air Force? In any United States Air Force Flying Base?

Q. Yes. A. No, sir.

Q. Well, apparently you are qualified. Did you take any training anywhere, and if so, where? A. We had our normal two weeks summer training with the Air National Guard.

Q. And when was that? A. At Savannah, 1956, and in 1957.

Q. Did you do any flying down there? A. Yes, I did.

Q. And at what base was this in Savannah, Georgia? A. Travis Field.

72 Q. Is that a U. S. Air Force Base? A. I don't think it is.

Q. Do you know who operates it? A. I believe the City of Savannah operates it.

Q. Well, was there any program there sponsored by the U. S. Air Force at that time? A. Again, we had to satisfy certain training criteria established by the Air Force.

Q. That was similar to the other programs that you have previously spoken of here? A. That is correct.

Q. Now, you told us about your change in status in 1958. At that time were you drawing the two types of pay checks in payment for your services? A. I was.

Q. And had you drawn the two different pay checks ever since? A. I had.

(Short recess then taken.)

73 Q. (By Mr. Galihier) Captain, what was the name of the senior advisor that you mentioned was the Wing Commander at Andrews Field? A. Colonel Stone.

Q. Do you recall his first name? A. James, I believe.

Q. Now, a few minutes ago you were talking about how damage was repaired, and where, to the planes. Where would you send the damaged parts, for example, the instruments that would be replaced by new instruments? A. There are instructions in Air Force regulations, or technical orders, that direct you to send them either to a repair facility of the Air Force, or locally repair or dispose of them. It varies with the particular case.

Q. When you say the Air Force, do you mean the U. S. Air Force? A. The United States Air Force.

Q. And do you use forms for the purpose? A. Yes, sir.

Q. And where do those forms come from that you use? From the United States Air Force? A. They would  
74 either come from the Department of Defense or the United States Air Force.

Q. Now, I think I was asking you about your status, your change in duties, which you described, early in 1958, and you mentioned some of your duties. Did you describe any of your duties in your other capacity? I don't believe you did. A. There was no change in my flying status at all.

Q. To make sure, if you don't mind, would you mind repeating again exactly what your duties were that remained with that change in status? A. I had the same responsibility for satisfying Air Force criteria, the United States Air Force criteria, and minimum flying I always had. There is no change in that particular area.

Q. Now, in your flying capacity, what duties did you have? A. I was an instructor pilot in the T33 and F86-type aircraft, and a flight check pilot in both types of aircraft, and instrument instructor pilot in the T33 aircraft.

Q. In the hearing before the CAB on page 136, you answered as follows:

75 "In the flying capacity, I am an instrument flight examiner in the T33 and instructor pilot in the T33, instructor pilot in the F86, and as I stated before, the aircraft maintenance officer for the unit."

Is that a complete description of what your duties were at that time with the change of assignment? A. The description is accurate, yes.

Q. Captain McCoy, some time ago interrogatories were served on the United States of America, and one of the questions provided as follows:

"At the time of the occurrences out of which this action arises and during May 1958 state each of the other branches of the United States Government, the Maryland Air National Guard, or any other branch of any other government that Captain Julius R. McCoy was connected with in any way, giving his rank, official position or positions, his titles, his serial number and his official status with any such governmental agencies."

To that question the United States of America  
76 answered as follows:

"Upon information and belief, Julius R. McCoy was, at the time of the accident, employed by the State of Maryland as a technician with the Maryland Air National Guard, his position being that of aircraft maintenance chief. Prior to May 16, 1958, he was employed as a tech-

nician, his position being that of base maintenance supervisor. In addition, McCoy was a member of the Maryland Air National Guard, holding the rank of captain therein, serial number AO784050. He also held an assignment of captain in the Air National Guard of the United States, serial number AO784050."

Now, does that accurately state your status at the time of this unfortunate accident?

Mr. Mudd: Excuse me just a minute.

(Discussion off the record.)

Mr. Mudd: For the record, let me enter an objection, inasmuch as the question calls for and the answer attempts to give what seemed to be conclusions of law. However,

I will permit the witness to answer insofar as he is able to.

77 Mr. Davidson: Can we hold that for a moment?

Q: (By Mr. Galiher) Well, suppose I ask you this, Captain McCoy, in view of the objection.

You have filed an answer in the actions instituted against you in the United States District Court for the District of Maryland, have you not, through your attorney, Mr. Mudd?

Mr. Mudd: That is correct.

Q. (By Mr. Galiher) And in your answer you have admitted that at the time of the occurrence, at the time of the accident, you were the agent, servant and employee of the United States of America, and that the jet aircraft involved was owned, controlled and operated thereby.

That is a fact, is it not?

Mr. Mudd: Again—and put this in the record—I think you are asking the witness non-factual questions, Mr. Galiher, and which in a sense are conclusions of law, which necessarily have to be based on facts.

That is the proper admission and answer filed to the pleadings.

78 Mr. Galiher: I have read it accurately, have I, Mr. Mudd?

Mr. Mudd: As far as I know. I have not checked it.

Mr. Galiher: I wonder if you would mind verifying that.

Mr. Mudd: Certainly. I presume it is accurate.

(Paper handed to Mr. Mudd.)

Mr. Pettibone: I would like to enter an objection to the form of the question also.

Mr. Mudd: As far as I can tell, the answer is properly read.

Mr. Wolcott: Could the witness identify that, please.

Mr. Galiher: Let the record show that there was exhibited to Mr. Mudd, counsel for Captain McCoy, a copy of the answer of Julius R. McCoy which was filed in answer to the case of the State of Maryland, for the use of Mary Jane Meyer, etc., vs. The United States of America and Julius R. McCoy, No. 11360.

Mr. Mudd: That is correct.

79 Mr. Wolcott: Could that be marked for identification, please.

Mr. Galiher: Mr. Reporter, would you mark this Plaintiff Capital Air Lines No. 1, for identification only.

(Answer marked Plaintiff Capital Air Lines No. 1 for identification.)

Mr. Galiher: Now, I don't believe we have ever obtained a formal answer to the question with respect to the interrogatory.

Q. (By Mr. Galiher) May I hand this interrogatory to you again, so that you will have it in front of you (handing paper to witness).

May I call your attention to the second interrogatory, which starts, "Prior to May 16, 1958," etc., and would you look at that, if you please and the balance of the paragraph, the balance of the answer. A. (Examined by witness.)

Q. Would that be a fair analysis of your job or jobs requirement or requirements?

Mr. Pettibone: I will enter an objection to the form of the question.



80 Mr. Wolcott: Pardon me, what question was that?  
 Mr. Galiher: Number 11, beginning with the word  
 "prior."

Mr. Wolcott: All right.

Mr. Mudd: I will accept the question as modified to mean job classification. I don't think the answer describes the job. It merely refers to its title.

Mr. Galiher: That is right.

Mr. Mudd: Now, can you answer, Captain McCoy, if that describes your job classification?

The Witness: Yes, basically. There is one omission I think in that sentence, that is included in the first sentence, and that is, a technician with the Maryland Air National Guard, and in the second sentence it does not include that.

Mr. Galiher: All right, sir.

Q. (By Mr. Galiher) Now, then, that was at the time of and prior to May 20th, 1958? A. That reference there is to the part of May 16th? Is that it?

Q. This is the situation, that instead of at the time of the accident and prior thereto in the answer, when  
 81 you indicated your change in status earlier that month— A. Ask me the question again.

Q. From the change in status, from the time of the change in status up to and including the time of the accident, the portion of the answer which I have just called to your attention, plus the one addition which you have made, would be a fair explanation of your jobs, your job classifications?

Mr. Mudd: With that modification, I accept the question. This is off the record.

(Discussion off the record.)

The Witness: Would you ask me the question once more, please, if I may have it?

Q. (By Mr. Galiher) With the one addition made by your counsel, does the language commencing with the word "prior" in the answer to interrogatory number 11, as read

to you, and change May 16th to May 20th, constitute a fair resume of your job classifications on and prior to May 20th, 1958? A. The status change occurred on May 16th, and so this prior to May 16th is not the status that I had.

Mr. Mudd: No, the question was, the answer given has been changed to read "prior to May 20th."

Mr. Davidson: On and prior to May 20th.

Mr. Mudd: On and prior to May 20th.

The Witness: I was not base maintenance supervisor on May 20th. I was base maintenance supervisor prior to May 16th.

Mr. Mudd: All right.

Q. (By Mr. Galiber) In other words, you were no longer base maintenance supervisor but were aircraft maintenance chief? A. That is correct.

Q. Now, what were you required to do to maintain this assignment as captain in the Air National Guard of the United States? A. I was required to attain the prescribed training, or the training assemblies, and to perform the duties of an aircraft maintenance officer in accordance with directives issued by the United States Air Force.

Q. What were the training assemblies that you were required to attend? A. These are scheduled training periods, of which there are normally twenty-four per year, and two weeks summer encampment.

Q. Where were they held and under what sponsorship? A. They were held at the 104th Fighter Squadron facility. In the case of the Friendship location, it would be at the Friendship Airport, and after moving to the Martin Airport, they would be at the Martin Airport, and the summer encampments were held at some other base.

Q. And who would conduct the training assemblies? A. The training program is established by the United States Air Force, conducted internally.

Q. And how were they also put on the program? A. The actual training was conducted internally within the unit.

Q. By whom? A. By the people in the 104th Fighter Squadron.

Q. And who were the people in the 104th Fighter Squadron who conducted them? A. The members of the unit themselves, the various supervisors within the unit.

Q. Can you name any of them? A. It might have been anyone. The members of the unit have to be specialists in a particular field.

Q. You might have conducted some of them, and did conduct some of them? A. That is correct.

Q. Did you have any U. S. Air Force men assigned to conduct any phase of them? A. Not especially.

Q. Was any record of the assembly transmitted to any particular location after its completion? A. I assume so. I did not have that responsibility personally.

Q. Would it be fair to say that that was transmitted to the United States Air Force?

Mr. Pettibone: I object to the form of the question.

A. Again, I don't know the routing.

Q. (By Mr. Galiher) Did Colonel Dow participate in any of these training assemblies? A. Did he participate in the training assemblies?

Q. Yes. A. Yes, sir.

Q. I do not mean to lead you into error by the word "participate." If you have some other expression, tell us about it. A. He participated in the training assemblies, yes.

(Discussion off the record.)

Q. (By Mr. Galiher) What about these summer encampments? Are these the same ones you have previously referred to? A. I don't recall the last date we referred to.

Mr. Davidson: 1957.

A. We had a summer encampment in 1958 and a summer encampment in 1959.

Q. (By Mr. Galiher) Before the accident in '58? A. No, sir.

Q. Well, I think you told us about the one—was it not in Savannah, in '57? A. Yes, sir.

Q. That is the one you have reference to, Travis  
86 Field? A. We had an encampment in 1957 in Savannah, yes, at Travis Field.

Q. Now, then, what else were you required to do to maintain your assignment as captain in the Air National Guard of the United States in addition to the training assemblies and in addition to the two weeks active duty? A. I was required again to fulfill the responsibilities of an aircraft maintenance officer during the training assemblies and in the summer encampment.

Q. And how could you satisfy the United States, how did you satisfy the United States that you had done just that? A. Well, I could only say I assume they were satisfied. I discharged those responsibilities of this duty to the satisfaction of the United States Air Force.

Q. Well, what I am trying to find out is how you established that you had done so and how you knew that you had satisfied the U. S. Air Force. A. Well, I fulfilled the duties as outlined by the regulations, the Air Force regulations and manuals and technical orders.

87 Q. Can you identify these particular regulations, manuals and technical orders? A. They are numerous, sir. There are great quantities of them.

Q. Well, can you list some of them, and can you supply your attorney with the additional ones, so that the reporter might have a complete answer to this question, please?

In other words, you need not complete your answer to that question today, but I would like a complete answer on that.

Mr. Mudd: Captain McCoy will give you as complete an answer as he can today.

Mr. Galiher: Yes, sir.

Mr. Mudd: That is all he can say.

Q. (By Mr. Galiher) Can you answer that, Captain? A. The question is, will I supply this—

Mr. Mudd: No:

Q. (By Mr. Galiher) No, the question is how much of that question can you answer today? Can you give us some of these that you made reference to? A. The only answer I can give you is that I discharged  
88 the duties of an aircraft maintenance officer as outlined in the job description and the appropriate publications.

Q. The job description as handed out by the U. S. Air Force? A. In the appropriate Air Force manual, yes, sir.

Q. Now, all of these manuals that you talk about and these regulations were supplied to you by the U. S. Air Force? A. They were requisitioned and received from the Air Force facility, yes, sir.

Q. What about flying? What was the flying requirement? A. Could you be more specific?

Q. What flying were you required to do by the U. S. Air Force to maintain your commission as a captain? A. The minimum requirements are outlined in Air Force Regulation 60-2, I believe, which establish the minimum with respect to various types of flying, such as night flying, instrument flying, total flight hours, and so forth.

Q. And was the purpose of that, as explained to you by the U. S. Air Force, to increase your proficiency?  
89 A. These flights are designed to increase and maintain a standard of proficiency, yes, sir.

Q. And did you always comply with the requirements from the time that you obtained your commission as captain? A. I satisfied the requirements every year on it.

Q. And exactly what were the requirements as to flight time from '56 up to and including the time of the accident? A. The minimum requirements—again this varies with the phases of the various types of flight that have to be accomplished by Air Force Regulation 60-2, which might change at any given time, or might have changed during that period, could supply that answer better than I could.

Q. Were you told that by increasing your proficiency as



a pilot your opportunity to advance would just be increased?

Mr. Pettibone: I object to the form of that question.

A. I don't recall a specific point being made of that, no.

Q. (By Mr. Galiher): Well, were you encouraged by the U. S. Air Force in these training assemblies, or the active duty assignments in each year, to fly more and more to increase your proficiency?

Mr. Pettibone: I object to the form of the question.

A. I think it is a natural assumption that by practice, by producing skill, that proficiency would be increased. However, there are limitations.

Q. (By Mr. Galiher): It is also a fact that it was necessary to put in a certain amount of flight time in order to maintain your own status and thus make yourself eligible for other assignments too, was that not a factor?

Mr. Pettibone: I object to the form of that question.

A. Would you restate the question, please?

Q. (By Mr. Galiher): In addition to proficiency, is it not a fact that it was also necessary to put in a required amount of time required by the Air Force in order that you might maintain your status and make yourself eligible for additional assignments?

Mr. Pettibone: Same objection.

91 A. As the total flying hours are increased, the total accumulated flying hours are increased, your pilot rating is more advanced.

Q. (By Mr. Galiher): Your rating in the Air Corps?

A: As recognition by the United States Air Force is advanced, thereby your responsibilities grow.

Q. And did you wish that to happen as the years went on? A. Yes.

Q. Did your pay increase between 1956 and 1958? A. Military pay?

Q. One and both. A. I don't recall the specific dates of a pay increase within that period, no. That is the best way to answer it.

Q. Did your rating with the U. S. Air Corps, the Air Force, go up in that period? A. As a pilot?

Q. Yes, sir. A. I was given additional responsibility as a pilot. However, I have never had a rating increase, because this is based basically on a division of hours and flying time. I did not achieve the flying hours in that period to have that pilot rating increased.

Q. But what increase in pay did you derive by virtue of the other phases that you mention? A. I don't recall an increase in pay, as I stated before. It is very possible that I may have had an increase in pay due to longevity in the service, but not because of more accumulation of flying hours.

Q. Did you have to pass any test to maintain your position in the National Air Corps of the United States? A. Pilots are required to complete annual examinations both in flying and with equipment.

Q. What about a physical examination? A. And a physical examination.

Q. And did you pass these examinations that you have referred to? A. I did.

Q. Each year? A. Yes.

Q. What sort of a test were you given on your flying period, and by whom? A. I was given an instrument examination each year and a standardization, flying standardization examination each year, and I could not recall at the present time the particular pilot that supervised those tests.

Q. Was that given you by a U. S. Air Force pilot? A. On one occasion I was qualified in aircraft, or in airman's language, checked out in an aircraft by a United States Air Force pilot, yes, sir.

Q. When was that? A. That was in, I believe, 1955.

Q. The type of aircraft, please, you were checked out in? A. F-86-E Series Aircraft.

Q. And you have already described that type of plane in the record? A. Yes.

Q. What about the other test? Was that a written test that you were given each year? A. A written examination, yes, sir.

94 Q. And was that given by the U. S. Air Force? A. One of those tests is a specified United States Air Force examination, yes, sir.

Q. And each year that was taken by you where? A. At the home station location.

Q. And sent to the Pentagon? A. I have no idea where the distribution was.

Q. Now, you told us about being checked out by an Air Force pilot in 1955. Did you have any check-outs in '56, in '57, or in '58? A. Yes. Let me see. I had additional checks in 1955 at Chanute Air Force Base by Air Force pilots.

Q. Was that to comply with these requirements that you previously alluded to? A. In one case, yes.

Q. And what year was that? A. 1955.

Q. What was the purpose of having check-outs? A. Well, let us say the requirements that I have alluded to previously. I have made no mention of check-outs prior to this.

Q. Well, I thought you mentioned there were two  
95 types of examination, and I thought the examination as to flying you had referred to as check-outs. If I am in error, please clarify it. A. One was a standardization, one was an annual standardization check, and the other was an annual instrument check.

Q. Well, the instrument check was not in a plane? A. It is in a plane, yes.

Q. And is that by the Air Force? A. It was on one occasion, yes, in 1955 I had an instrument check by a United States Air Force pilot, yes.

Q. Did you have any instrument check-outs by an Air Force pilot in '55? A. In 1954—that date may be wrong—I believe in 1954 I attended an Air Force School at Craig Air Force Base, Selma, Alabama, for the purpose of instru-

ment training, and check-out transition training in T-33 type aircraft.

Q. Did you have such checks in 1956 or '57 or '58? A. Your question is still by an Air Force pilot, is that correct?

96 Q. Yes, sir. A. I cannot recall any specific check by an Air Force pilot in that period.

Q. Did you have any check by anyone during that period? A. Yes, sir.

Q. By whom? A. By someone, either an Air Force pilot or a member of the 104th Fighter Squadron. As I say, I cannot recall if there was an Air Force pilot that administered the check.

Q. Do you have any record, or can you lead us to any sort of check? A. Yes, I believe that can be established.

Q. How? A. By records in my possession.

Q. Now, as of 1958, what flying time had you had in different kinds of planes, up to the time of the accident? Could you list them? A. As of the time of the accident, I believe my total flying time was something more than 1900 hours. I believe they were approximately 600 hours in jet type aircraft, and about 300 in T-33 and 300 in the F-86.

97 Q. Were you qualified in jet-type aircraft, and if so, when? A. I was initially qualified in jet-type aircraft, in T-33 aircraft, in 1954.

Excuse me, just a moment. Off the record.

(Discussion off the record.)

The Witness (continuing): My statement is right, sir. Now, my statement is correct so far as it is.

(Testimony read by the reporter.)

The Witness (continuing): And I was further qualified in F-86 type aircraft in 1955.

Q. (By Mr. Galiher): Have you enumerated your various qualifications and could you give us some idea as to

the time in each type of aircraft? A. I believe I just gave that.

Q. Excuse me. A. They are fragments, I might add.

Q. Now, May 20th of 1958, you were an officer in the United States Air Force Reserve, were you not? A. On May 20th of 1958, I was an officer in the Air National Guard of Maryland and the United States, to the  
98 best of my belief.

Q. As of May 1958, what sort of benefits were you receiving apart from the monies from the two sources that you have previously referred to? In other words, what pension or pensions were available to you at that time, what sick leave benefits were available to you at that time, what hospitalization benefits and the like? A. I was accruing retirement points in my capacity as in the military status for the scheduled training assemblies and the summer encampments, and other active duty for training tests that I might participate in.

Q. Was this in the United States Air Force that you are talking about? A. This is in the Air National Guard of the United States.

Q. Yes, sir. A. Or attending Air Force Schools, United States Air Force Schools for training.

Q. And upon retirement who would that pension be paid by? A. I assume the Federal Government.

99 Q. Yes, sir. Would you please continue? A. Insofar as sick leave in the military status, I don't know the policy, if there is such a thing, but it is my understanding that in the event of injury in line of duty, it is investigated to determine if it is first in line of duty, a line-of-duty-type of injury, and benefits are received from a military hospital, or a designated hospital by the military. This is in the Air National Guard military status.

Q. Had you prior to this accident ever been in any U. S. hospitals for sickness or injuries received in line of duty? A. Not since probably 1943.

Q. As a result of the accident which occurred on May 20th, 1958, did you go to a military hospital? A. I was



first admitted to the Frederick Memorial Hospital and transferred to the United States Public Health Service Hospital in Baltimore.

Q. I would like to pursue that a little bit further, if I might, to include a complete answer to my question as the various benefits that you were eligible to receive, 100 and I don't believe you completed that.

Were there any additional benefits that you were entitled to receive by virtue of your job status? A. As air technician, I was eligible for benefits under the Federal Employees Compensation Act.

Q. And what else were you entitled to? A. I was entitled to certain sick leave benefits that are accrued at some rate, but I am not really sure of that.

Q. From whom? A. From I assume the same source that I was employed by.

Q. Well, everything you have listed so far has been from the United States of America.

Were there any benefits that you were entitled to in the way of pension, sick or injury benefits, retirement, which the State of Maryland was required or had agreed to pay you? A. I think we have a legal point in that. I would not make a statement on it.

Q. Well, I am asking you now, and we might as 101 well resolve this, and tell us as far as you know.

Mr. Mudd: To your knowledge.

A. To my knowledge, the State of Maryland was not obligated.

Q. (By Mr. Galiher): Now, as a result of this accident, you had started to tell us that you were in a Government hospital. For how long a period of time were you there?

Mr. Pettibone: I object to the form of the question.

Q. (By Mr. Galiher): What hospital were you in, to make sure of the record. A. I was in the United States Public Health Service Hospital.

Q. Whereabouts? A. In Baltimore.

Q. And how long were you in that hospital? A. I was

confined to the hospital for approximately two weeks, and I received payment at the hospital for some three weeks after that, I believe.

Q. And did you pay the bill for that treatment?  
102 A. I did not.

Q. And do you know who paid the bill for that treatment? A. I assume that the Federal Employees Compensation Act paid the bill.

Q. Do you recall making out any forms in connection with that? A. I answered or completed a form there, I believe to the Department of Labor, to the effect that they would not assume financial responsibility unless I completed this particular form.

Q. How did you happen to get that form? A. It came in the mail.

Q. Was this after you had gone back on active duty? A. This is after I had gotten out of the hospital, yes, sir.

Q. And were back on active duty?

Mr. Pettibone: I object to the form of the question.

A. Well, what is your definition there of active duty?

Would you define active duty?

103 Q. (By Mr. Galiher): Well, I will take your definition. A. This is probably after I had returned to my job at Martin Airport. I am not sure that I had gone back to the job fully at that time or not.

Q. How long had you been out, Captain? A. When I got the form or when I went back?

Q. First of all, how long were you away after the accident before returning to Martin? A. Approximately four weeks.

Q. And this according to your best recollection is some time after you returned to work? A. I say now this might have been before I returned or it might have been after I returned. It was in that period somewhere.

Q. Did you keep a copy of this form that you made out or any of the correspondence? A. I may have a copy. I am not sure.

Q. Would you, if you please, search for it, and if you have it, turn it over to your counsel. A. I will.

104 Q. So that he in turn might let us see it. A. I will.

Mr. Galiher: May I ask you also at this time, Mr. Mudd, if you please—the Labor Department has declined to permit us to view the record of this case without a written authorization from Captain McCoy, and even if that is secured, they have not indicated to us whether they would permit us to see it, because of a communication from the Department of Justice.

Would you secure for us an appropriate authorization from Captain McCoy, so that at least we can comply with their tentative request?

Mr. Mudd: I will consider any authorization that is forwarded to us for signature.

Mr. Galiher: Well, as I understand, they have no formal authorization, and I think they will—  
Off the record.

(Discussion off the record.)

Mr. Galiher: I would leave it in that posture. And we can follow it up if necessary.

(Thereupon a recess was taken.)

105

#### AFTER RECESS

Q. (By Mr. Galiher): Captain McCoy, I think when we adjourned for lunch I was inquiring about Workmen's Compensation benefits. You told us you were out of work for a certain period of time. During that period of time did you receive your full pay? A. I did.

Q. From both sources? I should say both job classifications. A. Well, the air technician pay continued. The military pay would be discontinued if you missed a training assembly, or at least a portion of it would be discontinued. I don't recall if there was a training period within that period. I am sure there was. I don't recall if I missed

one within that time or not. But any training assembly that is missed is not made up, so that a portion of your pay would be deducted, it would be absent.

Q. As far as you know, was any part of your pay deducted? A. I don't recall.

Q. Now, all of your hospital and medical expenses were paid for? A. Yes, sir.

Q. By the Federal Government? A. Someone. The FEC, I believe.

Q. Colonel Kilkowski filed a request on your behalf for your treatment under the United States Employment Compensation Act, did he not? A. That is the normal procedure. I assume he did.

Q. You say that is the normal procedure? A. Because of an injury, the procedure is for the contractor or some designated supervisor to file a CA form of some number requesting treatment; in case there is some indecision as to the validity for the requirement of treatment, another form would be filed. But in either case the hospital is provided with a form requesting treatment by some designated person.

Q. In other words, what occurred in your case had occurred previously in other cases? A. With regard to the form, yes.

Q. And were you familiar with the forms which had been used in other cases? A. I am familiar with the forms.

107 Q. Had you actually yourself prepared such a form for any other injured person? A. I have.

Q. And do you recall specifically who these other cases involved? A. Not specifically. On an occasion or two there have been some minor injuries on the job that required treatment.

Q. Were these pilots? A. No.

Q. What was the job classification involved? A. Aircraft mechanics generally, people that worked directly for me.

Q. And this same form was used that had been used

in your case? A. As far as I know. If I could see the form, I could more accurately answer your question.

Mr. Galiher: Well, suppose I have this marked for identification, Plaintiff Capital Air Lines No. 2 for identification, please

Mr. Wolcott: Are you marking the whole group  
108 of papers?

Mr. Galiher: We might as well have the whole group marked.

Mr. Wolcott: Perhaps they ought to be clipped together.

Mr. Galiher: All right.

(Group of papers referred to marked Plaintiff Capital Air Lines Exhibit No. 2 for identification.)

Mr. Wolcott: I wonder if a statement could be made regarding the production of those papers.

Mr. Galiher: I am going to do that right now.

Mr. Wolcott: All right.

Mr. Galiher: This Plaintiff Capital Air Lines Exhibit No. 2 consists of a group of photostatic copies of records from the United States Employees Compensation Commission which were turned over to me for use in this interrogation by Mr. Theodore Wolcott during the luncheon recess, and were according to Mr. Wolcott obtained by him pursuant to application and court order in the proceedings which he has filed.

Mr. Wolcott: No court order, but application and  
109 agreement of counsel.

Mr. Galiher: Application and agreement of counsel in the action which he has instituted in the State of New York.

Mr. Wolcott: The Morgan case.

Mr. Galiher: In the Morgan case.

Mr. Pettibone: May I see them, please?

(Papers handed to Mr. Pettibone.)



Mr. Galiher: On yesterday, I think you said.

Mr. Wolcott: Yes, they were furnished to me by Mr. James Fitzsimmons, Assistant United States Attorney, in charge of the procurement division for the Eastern District of New York.

Q. (By Mr. Galiher): The form I have referred to was the one which bears Colonel Kilkowski's typewritten name and I believe his signature on the original.

(Papers handed to Mr. Mudd and then handed to the witness.)

Q. (Continuing): Is this the form that you are familiar with and that was used in your particular case? A. Yes.

110 Q. This is the one that had been used in one or two other cases involving injuries at the base? A. Yes.

Mr. Wolcott: Have you identified that particular form by number on file?

Mr. Galiher: The form I have shown is captioned Request For Treatment Of Injury Under The United States Employees Compensation Act, and then there follows, "Employees of the United States are entitled to medical, surgical and hospital treatment under the provisions of the Compensation Act only for injuries sustained in the performance of duty." And it is dated May 27th, 1958 and bears the signature of Victor F. Kilkowski, Lieutenant-Colonel, Maryland—well, I will read it, "Md. NGAF, Base Detachment Commander."

Q. (By Mr. Galiher): In connection with your injuries and your treatment, you were treated by a physician at the U. S. Public Health Hospital by the name of Doctor—is that Winslaff? A. Doctor Winslaff.

111 Q. Who was George J. Winodich? A. Windich?

Q. Windich. A. He is the administrative assistant, or at that time was administrative assistant to Colonel Kilkowski.

Q. And because of burns on your hands. And did you authorize him on May 29th, 1958 to sign any other form which contains the caption, "Employees Notice of Injury or Occupational Disease, Federal Employees Compensation Act"?

(Paper handed to witness.)

A. That is correct.

Q. The injuries which are covered in this file that has been exhibited to you, or portions of which have been exhibited to you, are injuries received in their entirety as a result of the collision which we are inquiring into here today, Captain McCoy?

Mr. Pettibone: I object to the form of the question.

A. I have not seen the file in its entirety. I don't know all that is in there.

(Papers handed to witness.)

(Papers examined by witness.)

112 Mr. Mudd: You can answer the question now.

A. As far as I could determine, there is nothing in there that was not—no injuries noted that were not a result of the accident.

Q. (By Mr. Galiher): And did you receive certain benefits as a result of this claim?

Mr. Pettibone: I object to the form of the question.

A. I was given medical care, medical attention and hospitalization, at no expense to myself.

Q. (By Mr. Galiher): And so far as you know, you lost no pay? A. As far as I know now, I lost no pay.

Q. And did you also execute an agreement under the terms and conditions of which you in consideration of the payments made to you by the United States under the Federal Employees Compensation Act, sold, assigned, transferred and set over to the United States of America all your right, title and interest in and to any claim which you might have for damages against Capital Air Lines

and against any other parties other than the United States who might be legally liable for such injury, together with all rights of action thereunder on October 3rd, 1958? A. I saw that. That is the form that you referred to earlier in the deposition, and which I said I might be able to locate. Do you still require that?

Q. No, sir. A. I did sign it. I executed it.

Q. That is what you had reference to earlier in the deposition? A. That is correct.

Mr. Mudd: May I ask, Mr. Galiher, if at some convenient time I could be furnished copies of these documents which we do not have?

Mr. Galiher: Yes. As a matter of fact, I am going to make copies of this. I will make a copy for Mr. Mudd if that is all right with you, Mr. Wolcott.

Mr. Wolcott: Yes, no objection.

Q. (By Mr. Galiher): Now, has any branch of the United States of America gotten in touch with you concerning the filing of a claim against Capital Air Lines? A. None.

114 Let me retract that. Has any branch approached me—

Q. Yes, sir. A. —if that is what you have in mind?

Q. Yes, sir.

Mr. Mudd: Off the record.

(Discussion off the record.)

Q. (By Mr. Galiher): Now, coming down to the day of this particular unfortunate accident, what was your assignment and tour of duty? A. This was a non-military day. I was in an air technician's status when I reported at the normal work hour of eight o'clock, and my assignment for that particular day was as aircraft maintenance chief, as an air technician.

Q. At Martin Field? A. That is right.

Q. And what time of the day did you take off on this flight? A. 1107.

Q. What time had you commenced work? A. At eight o'clock.

115 Q. What had you done from eight until eleven? A. I had performed the duties of aircraft maintenance chief.

Q. Which on that day consisted of what? A. I don't recall the specific functions. The overall supervision of the maintenance program for the day and other related projects.

Q. Had you had any plan for this flight prior to this day? A. Yes.

Q. When had the plan been formulated or made for this particular flight? A. The initial planning stages were on the preceding Saturday.

Q. What had taken place at that time and who was involved? A. Why, I believe on that Saturday I approached Colonel Kilkowski with the possibility of taking that flight on that Tuesday, and also with the possibility of the passenger being allowed to accompany me.

Q. Well, apparently you had met this passenger 116 prior to that time. A. Yes. I had known him for approximately three years, I believe.

Q. When had you discussed with him his taking a flight? A. Well, in the preceding period of time I discussed it more than once.

Q. What was this man's name and what was he doing? A. His name is Chalmers. What do you mean, what was he doing?

Q. Did you discuss the proposed flight with him? Was he in the Air Force? Was he in the National Guard? Was he a civilian? Just what was his status? A. He was in the Maryland National Guard, the ground division, in the Air National Guard, the Maryland National Guard, the ground branch. And he had known me for about three years in that field and in that branch. I had known his father, and I had known the fellow myself over this period of time, but not through the National Guard necessarily.

Q. Were you trying to interest him in being a full-time employee of the Air Force? A. No.

117 Q. Well, how did the discussion of flying come about with him? A. He was interested in aircraft. I had invited him to the field on numerous occasions, or on some occasions, to look at the aircraft and—

Q. Had he indicated any interest in the Air National Guard? A. Through me, he had, or because of me he had.

Q. In what degree and in what respect? A. Well, I can't answer for the degree. He was interested.

Q. In other words, you were interested in getting him to join— A. Yes.

Q. —the Air National Guard? A. Yes.

Q. Up to that point he was in the Maryland National Guard? A. That is right.

Q. And had he expressed an interest in flying? A. He had.

118 Q. Did he have any flying background that you know of as a pilot? A. None.

Q. Did you arrange a tentative flight with him on Tuesday the Saturday before? A. Yes.

Q. As a result of a conference you had with Colonel Kilkowski? A. That is right.

Q. And what conversation did you have with him concerning this young man and concerning the flight on Tuesday, as far as you can recall? A. I specified to Colonel Kilkowski that all the requirements or regulations would be satisfied, and that he could comply with all the requirements as they existed at that time, and he approved the flight.

Q. Did you tell him that there was any other reason for the flight? A. Well, I had made at that time numerous flights for one purpose or another, for flight checking purposes, for efficiency of flying.

119 Q. For flight check purposes, that is to check the equipment that was under your control? A. That is correct.

Q. The material that was under your control? A. That is correct.



Q. And that was one of the things that you were required to maintain and keep a careful check on? A. I was required to maintain and keep a careful check on the equipment, and by flying it I had a better opportunity to check the quality control of the product we were maintaining.

Q. And on this particular flight you were doing it for that purpose as well as the purpose of maintaining proficiency?

Mr. Mudd: Excuse me.

Doing it for that purpose. What purpose?

Mr. Galiher: The purpose he has just mentioned in the prior question.

Mr. Pettibone: I object to the form of the question. I don't think it is clear to anybody.

Mr. Mudd: No. The last purpose he mentioned  
120 I think was maintaining efficiency.

Mr. Galiher: Well, I will ask it that way.

Would you read back his last answer?

(Answer read by the reporter.)

Q. (By Mr. Galiher): And also, by the same token, to increase your own proficiency at the same time as a pilot?  
A. That is correct.

Q. And that was the purpose of the particular flight at the time of this unfortunate accident? A. I made numerous flights with the idea in mind to increase my proficiency and to analyze the quality of the product. This particular flight—

Q. You include that? A. This particular flight was a part of my function to maintain proficiency and maintain the equipment.

Q. Thank you.

Now, then, what formal details were carried out on this morning prior to eleven o'clock by you in consummating or formalizing arrangements? A. This is with regard to the flight itself?

121 Q. Yes, sir. A. Again, I contacted Colonel Kilowski and satisfied him once more that the flight could be made within the regulations, that there was no violation, and he once more agreed to the flight. Since there would have been a passenger this approval is always provided. The preparations for the flight themselves were made by myself, with the assistance of some personal equipment personnel who aided me in the briefing and the preparation of the passenger.

Q. And do you recall who that was? A. Who the people were?

Q. Yes, sir. A. It was Sergeant Button—B-u-t-t-i-o-n.

Q. And his first name, please, if you have it. A. Lester.

Q. Is he with the Air Corps? A. He is with the Air National Guard.

Q. Yes, sir. A. An air technician.

Q. Yes, sir. A. Sergeant Perticone—P-e-r-t-i-c-o-n-e.

122 Q. His first name, please. A. What is his name?

Mr. Mudd: If you don't know, say you don't know.

The Witness: I don't know.

Q. (By Mr. Galiher): Likewise the Air National Guard?

A. Yes.

Q. Did you file a flight plan? A. I did.

Q. Who did you file that with? A. I filed Air Force No. 113 Local Flight Plan in the Operations Office of the 104th Fighter Squadron. It is a DD form.

Q. Who approved that? A. I approved it.

Q. You had authority to approve that without going to anyone else? A. That is correct.

Q. Now, is that flight plan still in existence, and if so, where is it? A. I don't know where it is. I assume that the flight plan or a reproduction thereof is still in existence somewhere.

123 Q. Did you have to do anything else before take-off? A. I obtained the appropriate weather brief from the weather terminal at Friendship Airport. I got necessary clearance from the tower for taxi and take-off.

Q. Are you talking about the Friendship tower, or do you have a tower at Martin? A. The Martin tower.

Q. Who operates that tower? A. I believe the Martin Company operates it.

Q. And do you know who employs the operators therein? A. I believe that the Martin Company employs them.

Q. Yes, sir.

Now, then, did you have radio communication with the tower prior to take-off? A. I did.

Q. Did you have radio communication with any other place prior to take-off? A. I did not.

Q. Now, this plane you were in was a United States Air Force plane? A. This aircraft was assigned to the 104th Fighter Squadron by the National Guard Bureau, and I understand it is the property of the United States Air Force.

Q. Can you tell us what markings were on the plane? A. The identification on the aircraft?

Q. Yes. A. I believe it was AFNG. I am not really sure of this fact. It may be either Md. ANG, or AFNG. And Md. ANG stands for the Maryland Air National Guard and AFNG stands for Air Force National Guard.

Q. You mean by that you had some markings of one description on some planes and some other markings on others? A. This is very possible, but at the time there was a transition from one type of markings to another.

Q. But in any event, regardless of the markings, the plane was a U. S. Air Force plane?

Mr. Pettibone: I object to the form of the question.

A. It is my understanding it is the property of the United States Air Force, yes.

125 Q. (By Mr. Galiher): What was the transition you are speaking of? A. This is a change in the lettering on the side of the aircraft from MdANG to AFNG.

Q. In other words, the Air Force was required, whenever it was that they did it, that the planes be lettered

with AFNG on them instead of MdANG? A. As far as I know, it was required by the National Guard Bureau.

Q. Do you recall when that came about? A. I do not.

Q. Were you in uniform on that day? A. I was in uniform and a flying suit when I was in the aircraft.

Q. Similar to the type of uniform that you have on? A. It would probably be the khaki, a khaki uniform, summer khaki uniform.

Q. And that was the type uniform you had worn for a number of years? A. That is correct.

126 Q. Similar to that of the U. S. Air Force? A. That is correct.

Q. And was the flight suit that you wore the same type of flight suit required by the United States Air Force? A. That is correct.

Q. Did anything else occur prior to the take-off?

Mr. Mudd: Objection. I don't think the witness can answer that unless you would amplify it a little bit.

Mr. Galiher: I mean of a significant nature.

He told us he filed his flight plan, and he told us he was cleared by the Martin tower.

Q. (By Mr. Galiher): Did anything else take place prior to take-off? A. At this moment I can't think of anything significant.

Q. What was the condition of the weather? A. The weather was given to me by the Friendship weather facility as being, I believe, 5500 feet overcast, but broken, with ten miles visibility, rapidly improving.

129 Q. (By Mr. Galiher): Did you plan this flight in accordance with Air Force regulations? A. Air Force and Local regulations.

Q. And did you file the flight plan on the Air Force form? A. It is a Department of Defense form.

Q. A Department of Defense flight plan? A. That is right, clearance, flight clearance.

134 Q. (By Mr. Galiher): Yes, I want to ask him if he would interpret that for us, first, if he was familiar with it, and secondly, if he would interpret it.

. . . . .

135 Q. (By Mr. Galiher): I asked you if you could explain and/or interpret that document to us. A. I have seen similar documents. I don't believe I have seen this one before. But this is a standard message form, TW4 form. And it is from headquarters, ANG, at Wright Field Air Force Base, Ohio, and it is to various people, which you can identify here, directing the transfer of in a particular case T-33, 53, 59, 66, to the 104th Fighter Bomber Squadron, and which gives instructions for delivery to Friendship Airport.

Q. Is that the plane which you took off in? A. That is correct.

Mr. Galiher: Would you mark that Plaintiff's Capital No. 4 for identification, if you please, Mr. Reporter?

(Flight plan referred to marked Plaintiff Capital Air Lines Exhibit No. 4 for identification.)

. . . . .

136 A. This is the—excuse me—I said this is Air Force Form 113, and this is the local flight clearance.

Q. Is that one of the documents that you filed prior to take-off? A. That is correct.

Mr. Galiher: No. 5, if you please, for identification.

(Weight and balance clearance form referred to marked Plaintiff Capital Air Lines Exhibit No. 5 for identification.)

Q. (By Mr. Galiher): Please examine that, Captain (handing paper to witness).

(Paper examined by witness.)



Q. (By Mr. Galiher): Is that a part of the documents that were filed when you filed the flight plan?  
 137 A. This form is on file

142 Q. (By Mr. Galiher): Will you examine document No. 6 and tell us as far as you can recall if this is the course your flight followed from the start to the accident?

144 The Witness: It is the approximate course, but I have no idea whether it is to scale or anything else.

Q. (By Mr. Galiher): All right, thank you.

Now, then, as you have indicated, you first went over Chesapeake Bay. Did there come a time thereafter when you flew over Friendship International Airport? A. I say that approximates it. We did not pass directly over Friendship Airport.

Q. Do you recall what your altitude was at that time?

Mr. Mudd: At which time?

Mr. Galiher: When he passed over or in the vicinity of Friendship Airport.

Mr. Mudd: Please specify that. He just said he did not pass over Friendship.

Q. Mr. Galiher: Or in the vicinity of it.

A. As near as I can recall, it was about 3000 feet at that point.

Q. (By Mr. Galiher): Was it to your right or to your left as you went over it? A. It was to my right.

Q. Did you have two-way radio communication in  
 145 your plane? A. We did.

Q. And did you talk with your passenger from time to time? A. Yes.

Q. Do you recall up to that phase of your trip any particular conversation that passed between you, any particular objects or landmarks that you had noted? A. I don't

recall at this time any particulars at any particular time along the route.

Q. Did you check with the Friendship tower when you went in that vicinity? A. I did not.

Q. Was there any reason why you did not check with the tower there? A. There was no reason why I had to check. There is no requirement, in other words.

Q. Did you at any time on this flight use any frequency for reception other than 236.6? A. I did not.

Q. Did anyone on any occasion during this flight  
146 ever transmit to you on this frequency? A. Only at take-off.

Q. In other words, from take-off to the accident you neither received any radio transmission nor sent one? A. I did not say that. I said nobody transmitted to me to my knowledge. I received, I was maintaining a listening watch.

Q. All right. A. But there were no transmissions directed to me to my knowledge.

Q. All right, what do you recall receiving? A. I don't remember.

Q. Do you know if there is a record of those receptions?  
A. I don't know. I don't have any idea.

Q. Do you know who you were receiving from? A. I do not.

Q. Would it have been from any place other than Martin?  
• • • • •

A. I haven't any idea. There were no transmissions  
147 sions directed to me to my knowledge. I have no idea of any other transmissions, or the origin of any other transmissions.

Q. (By Mr. Galiher): Well, did you distinguish between transmissions directed to you and what you received on that channel? A. I did not receive any transmissions directed at me from the time I departed Martin Airport until, or at any other time throughout the flight.

Q. Well, did you hear any communications over your radio at any time on that flight, not necessarily to you, but to either military or commercial planes? A. I heard transmissions, yes.

Q. Transmissions from whom, do you recall? A. I don't know.

Q. (By Mr. Galiher): Could you distinguish between whether they were entirely military or some military and some commercial? A. I have no idea.

Q. Is there any communication in existence which  
148 would require your recollection as to that, that you know of? A. Not to my knowledge.

Q. After Friendship, where did you fly to? A. On a generally westerly heading to the vicinity of Leesburg, Virginia.

Q. What was your altitude from Friendship to Leesburg? A. At one point it was as high as 9000, never higher than 9000 feet, and there were various altitudes, and when I say "various," climbing to 9000, for instance.

Q. Did you fly on an airway from Friendship to Leesburg? A. Very possibly.

Q. You don't know exactly? A. I did not follow any airway in particular.

151 Q. This flight from start to finish was made in conformance with United States Air Force Regulations?

152 A. That is right.

Q. You were required, of course, to conform to those U. S. Air Force Regulations? A. That is correct.

Q. In flying this plane? A. That is right.

154 Q. Do you know if you were on an airway at the time of the accident? A. I don't know.

Q. Don't you know that you were on a commercial airway at the time the accident occurred? A. I am not aware

that there are commercial airways, so I am not familiar with it.

155 Q. Have you since learned specifically that you were on a Civil Aeronautics Airway, Victor 44, at the time of the accident? A. I believe that is correct.

166 Q. Now, then, do you ever receive any instructions from anyone as to flying on airways, commercial or otherwise? A. Could you restate that?

Q. With respect to looking out for other planes. A. Could you restate your question, to correct it to aeronautical airways?

Q. To Civil—— A. To Civil Aeronautics.

Q. I will do that. A. Military pilots are required to observe the Civil Aeronautics Regulations or new FFA Regulations; and observe the same traffic separation and operate in the same manner on an airway as anyone else, and were so instructed.

167 Q. You were familiar with that at the time of this occurrence? A. That is correct.

168 Q. (By Mr. Galiher): Who first interrogated you about this accident? A. I don't recall.

Q. Did there come a time when United States Air Force officers interrogated you about the accident? A. There was.

Q. And did they interrogate you before the Civil Aeronautics officers talked with you? A. Are you referring to the hearing itself or——

169 Q. Well, there was a United States Air Force hearing, was there not? A. There was.

Q. And there was a Civil Aeronautics Board hearing? A. There was.

Q. The United States Air Force hearing took place before the Civil Aeronautics Board hearing? A. That is correct.

Q. Now, I am talking about first of all the officers of the United States Air Force. Did they interrogate you prior to the hearing?

Mr. Mudd: Prior to the Air Force hearing?

Mr. Galiher: Yes.

A. Yes, they did.

Q. (By Mr. Galiher): And did you give a written statement to the Air Force? A. I believe I did, yes, sir.

178 Q. Could you describe the Air National Guard setup at Martin? That is, what have they got there? Hangars, or just how is it laid out? A. You mean the entire facility, the Air National Guard facility?

Q. Generally, just generally. A. Well, we have a hangar that houses most of our aircraft maintenance, and we have all of our maintenance and the operations section and the administrative section, and training. This is ground training, air crew training. And then we have two ware-  
179 house locations and the transportation shop, and a crash station. And there is a fuel storage area, and ample parking facilities for our twenty-eight aircraft.

Q. Who do those buildings belong to? A. I believe they belong to the State of Maryland.

Q. I see. Are any of them on lease to Martin? A. None of those buildings are on lease to Martin.

Q. Was there a ground lease to Martin? A. I am not familiar with that.

Q. I see.

Now, are there any full-time officers of the National Guard, that is, staff officers, that are stationed at Martin? A. You mean as opposed to air technicians?

Q. Yes. A. Not Air National Guard, no.

Q. Was there a Colonel Maisch—M-a-i-s-c-h? A. Major M-a-i-s-c-h?

Q. Major Maisch. Is that M-a-i-s-c-h? A. Yes.  
Colonel Kilkowski: Joseph.



180 Q. (By Mr. Wolcott) What is his rank and status? A. He is an air technician, and if I am correct his job title is Operations Supervisor, and he is the squadron operations officer in a military status.

Q. By whom is he employed? A. By the Air National Guard, in the air technician program.

Q. You are talking about the Air National Guard?

Mr. Pettibone: I object to the form of that question.

Q. (By Mr. Wolcott) Answer it, please. A. The manning of air technicians for that is provided by the Air National Bureau, and the manpower allocations are allocated to the states who then fill these positions locally. However, who employs him is a legal point.

Q. Just to clarify my thinking, could you tell me what the distinction is as between Air National Guard and the Maryland Air National Guard? A. The Air National Guard of the United States includes the various states. They are controlled and directed by the National Guard Bureau.

That is as I understand, I mean.

181 Q. I see. A. This direction goes to all the states.

Q. As far as you understand, that is the Federal Organization, the United States Air National Guard?

Mr. Davidson: The Air National Guard.

A. Of the United States.

Q. (By Mr. Wolcott) That is a Federal organization?

A. The general group of the various states.

Q. In other words, it is a national organization that supervises the state organization, is that it? A. Its supervision and direction is initiated with the National Guard Bureau and disseminated to the various states. Now, whether they have an organization called that—

. . . . .

198 Q. (By Mr. Wolcott) In the course of your training and experience, did you become familiar with the CAR, particularly referring to Part 60?

Mr. Pettibone: I object to the form of that question.

Q. (By Mr. Wolcott) Will you answer that, please? A. I believe that all of the CARs are included in Air Force Regulations 66-D as they apply.

Q. Yes. Now, what manuals were used by you in connection with the operation and maintenance of T-33 type aircraft? A. Operation Technical Order T-33-A-1, which is the operation manual, or aircraft operation manual technical order.

Q. Does that also include maintenance, or is, that the general operation? A. No, maintenance; the general maintenance manual would be IT-33-A-2, and it shreds out for all types of maintenance.

217 Q. Captain, who is the Air Force liaison officer  
218 stationed at the base? A. Major Britton.

Q. Can you give me his full name? A. Milton D. Britton.

Q. Are there any other Air Force personnel stationed at the base? A. There are.

Q. Could you tell us who they are, please? A. I am not positive of the names.

Q. As best you can and also while you are at it just give us their function, please. A. I can't be positive. There is Sergeant Baldwin, Sergeant Storm, and one whose name escapes me at this moment.

Q. What are the functions of these sergeants? A. These people are to assist Major Britton in advisory services in the maintenance area, the administration area, and weather flight.

219 Q. Is there a manual, or are there manuals used  
in connection with that function? A. We are governed by manuals and regulations that also govern Major Britton and assist him.

Q. Are these manuals Air Force manuals? A. They are.

Q. Issued by the United States Government? A. That's right.

220 Q. Can you recall any? A. Air Force Regulation 60-16 is the governing regulation and it is accompanied by manuals that are—manual the details.

223 Q. (By Mr. Wolcott) Did Major Britton have an office there at Martin? A. He did.

Q. How was that designated? A. The physical identification of the office I believe is Air Advisor's Office.

Q. And is there a United States Air Force plate, insignia, or sign there? A. Not to my knowledge. No.

Q. Is that located in proximity to other officer personnel at the Air Force Base? A. It is.

Q. How close is that? Is that part of the same building? A. It is the next office; adjoining offices.

224 Q. Next office to whom? A. To the squadron commander and the base detachment commander.

Q. Who is that? A. Squadron commander is Major John F. R. Scott, Jr.; and the base detachment commander is Lieutenant Colonel Victor Kilkowski.

Q. Who is here and has been here throughout this proceeding, is that correct? A. That is correct. Colonel Kilkowski has been—

Q. Pardon me. A. Colonel Kilkowski has been here. Major Scott hasn't.

Q. That's right. Thank you.

Now, did Major Britton ever accompany anyone on flights? A. He has.

Q. Is that part of his regular procedures? A. I believe that part of his duties are to assist with the standardization of training and performance of the air group personnel.

225 Q. Did Major Britton also inspect the aircraft from time to time? A. As part of a pilot's normal

duties he would inspect the aircraft for its fitness before flight.

Q. Now you are referring to the time that he would be piloting a plane? A. That's right.

Q. Now, apart from that, would he inspect the squadron? A. Well, his office from time to time inspects aircraft and training.

Q. Thank you for the suggestion, Captain. So when I refer to Major Britton I will include his office. That is, his staff; the sergeants, I think that you mentioned. A. That's correct.

Q. They assist him in performing that function.

Well, just what do the sergeants do? A. They assist Major Britton in the performance of his duties through inspections and observations of the activities of the squadron.

Q. Is Major Britton and his staff there full time? A. Major Britton is regular Air Force, or he is full-time Air Force.

Q. I see, and he is there all the time at Martin? A. He is there the normal workday, yes.

Q. And how many hours is that, and what are the times involved? A. That is five days a week, roughly eight hours a day.

Q. Is that weekdays? A. Tuesday through Saturday.

Q. Tuesday through Saturday. That also applies to the sergeants? A. That's correct.

227 Q. What are the points of contact you have in the course of your duties at the Martin Air Force Base with Major Britton or his staff? A. The inspections that—

Mr. Pettibone: One moment, please, before the witness answers. I will object to the form of the question.

Mr. Wolcott: All right. Please answer it.

The Witness: The inspections that Sergeant Baldwin would complete are generally forwarded to the commander,

Major Scott, with Major Britton's signature, and then they are forwarded to me for action to comply with the discrepancy, or so forth, at the Martin Airport.

248 Q. (By Mr. Wolcott) Now, Captain, what do you  
249 understand local flying area to mean? A. The local flying area, as I understand it, is as dictated by the commander through the operations officer.

Q. And is that a particular area to which you are physically limited in the operation of your aircraft?

Mr. Mudd: Objection.

The Witness: Shall I answer?

Mr. Mudd: Sure. Go ahead.

Mr. Wolcott: Yes. Go ahead. Answer.

The Witness: The only local flight clearance, VFR local flight clearance, the S.O.P. confines the operating—the operation of the aircraft to the local flying area, yes, sir.

Q. (By Mr. Wolcott) Well, now, on May 20th, 1958, were you limited to this local flight area? A. I was limited by S.O.P. with the type clearance I had to local flight area.

Q. The local flight area that we have just discussed, is that right? A. As near as I can determine, yes, sir.

Q. Now, in the performance of your duties as maintenance officer what uniform did you wear, Captain?

250 A. The uniform that I have on right now.

Q. Are there any other uniforms that you wear at the base other than what you have on now? Any other types of uniforms? A. Only the summer version of the same type of uniform.

Q. I see, and this is the same as completely identified by you last week? A. That is correct.

Q. So that whether you are performing flying duties or maintenance duties, or caretaker duties, or inspection duties, you always wear this uniform or the summer version thereof, is that right? A. Normally in the operation of an aircraft, you would not wear this uniform. Otherwise, yes.



Q. Now, in the operation of an aircraft you are talking about flight now? A. That's right.

Q. What uniform do you wear? A. You would wear the flight equipment, flight gear.

251 Q. Which consists of what? A. Flying suit, flying boots, gloves, helmet, parachute.

Q. Is that worn over your uniform? A. Not normally.

Q. You take your uniform off and put that on? A. That's correct.

Q. Now, what insignia does this flying gear have or markings? A. It is identified as property of the United States Air Force.

255 Q. Yes. Now, on this particular occasion who conducted the pre-flight inspection? A. Maintenance personnel.

Q. Who is that? A. I believe that was Sergeant Nolan.

Q. Is there a record or form made of this pre-flight—  
A. There is.

Q. And what is the form called, or how would you identify it? A. This inspection is recorded in one section  
256 of the, again 781 form.

Q. Is Sergeant Nolan in the employ of the United States? A. Sergeant Nolan works as an air technician with the Maryland Air National Guard.

Q. And so far as you know is he paid by the United States? A. As far as I know his pay check is drawn on the Treasurer of the United States.

Q. Is he a full-time employee? A. He is a full-time employee.